

The use of headings of titles throughout this exhibit is for convenience only and shall not be used to interpret or govern the meaning of any specific term, function, or activity.

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1. Additional Incorporated Exhibits

- A. The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

1) Exhibit A	The Narrative Proposal submitted by the Contractor on (enter date), as incorporated into this Agreement by reference.	X page(s)
2) Exhibit B	The Cost Proposal submitted by the Contractor on (enter date).	X page(s)
3) Attachment 17	Cost Proposal Form	1 page

- B. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by CDHS, as required by program directives. CDHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. CDHS will maintain on file, all documents referenced herein and any subsequent updates.

- 1) CDHS Health Administrative Manual Section 6-1000
- 2) Exhibit name (i.e., Program Manual)
- 3) Exhibit title (i.e., Numbered Program Policy letters)

2. Access Requirements

- A. CDHS Right to Monitor

The CDHS shall have the right to monitor all aspects of the Contractor's performance of the Contract.

Wherever a duty of access is imposed on the Contractor or its subcontractors in the Contract, the Contractor shall have a duty to cooperate, which shall not be withheld, with CDHS staff, authorized CDHS and/or federal representatives, and/or the Contracting Officer's designees.

- B. Access to Premises

To assure compliance with the Contract and for any other reasonable purpose, the CDHS and its authorized representatives and designees, as authorized by the Contracting Officer, shall at all times have the right of access, with or without notice to the Contractor, to the Contractor's, or its parent corporation's, premises. Such premises shall include the HCO main operating facility, and/or such other place where duties under the Contract are being performed, including the Contractor's data center, to inspect, monitor, or otherwise evaluate the work performed or being performed therein, or to elicit information concerning the HCO Program Operations or any related work. Badge request for CDHS and federal personnel shall be honored promptly by the Contractor, with temporary badges provided upon request. Permanent badges, including picture badges, must be supplied within five (5) business days of request, as authorized by the Contracting Officer. The Contractor shall provide a badge system consisting of:

- 1) A badge requiring an escort.

- 2) A badge requiring no escort for all secured areas.
- 3) Such other security identification as may be approved by the Contracting Officer.

The Contracting Officer shall designate which category of badge each CDHS and federal staff shall have.

All security areas shall be accessible to staff designated by the Contracting Officer. For any instances of access in any area by the CDHS, the Contractor shall provide, and shall require any subcontractor to provide, all reasonable facilities, cooperation and assistance to such CDHS representatives in the performance of their duties. All such instances of access shall be undertaken in such a manner as will not unduly delay work. The right of access referred to herein shall include on-site visits by authorized designees of the CDHS including potential Proposers for the purpose of procurement of a successor contractor.

If the above-stated Contracting Officer's authorized designees include the Contractor's competitors during the procurement of the Contract, the Contracting Officer will give the Contractor at least two (2) business days' notice prior to the visit. If the above-stated Contracting Officer's authorized designees include the Contractor's successor, the CDHS will attempt to give one (1) business day's prior notification to the Contractor. Should circumstances not permit such a one (1) business day's prior notification, the Contractor, upon proper identification of the authorized designees of the Contracting Officer, shall make required escorted access immediately available. This provision shall continue through Contract transition. Such access shall be for the purpose of facilitating required Takeover activities.

The successor Contractor's designated staff shall be issued visitor badges which require that the staff be escorted at all times within the Contractor's main operating facilities, except when in CDHS staff locations. Badge and escorting responsibilities of the Contractor shall not be unduly withheld or delayed. Such access will not interfere with the Contractor's ongoing operations. During the period of time access is allowed to the subsequent contractor, should any dispute between the Contractor and the subsequent contractor arise as to any issue concerning this access, either party may request the assistance of the Contracting Officer. A mutually agreeable resolution will be sought between the Contractor, the subsequent contractor and the Contracting Officer. If a mutually agreeable resolution is not reached within five (5) business days, the Contracting Officer shall make a final decision, subject to Exhibit E, Additional Provisions, Section 45 Subcontracts – Relationships between Contractor and Subcontractor, and Cost Reimbursable Purchases.

Department of Health and Human Services (DHHS), CMS and General Accounting Office (GAO) officials and other authorized CDHS and/or federal personnel shall have the right to independent access to Contractor's premises upon the Contracting Officer providing the Contractor a list of persons named by DHHS, CMS, GAO or other CDHS and/or federal agencies as authorized to enter all Contractor premises engaged in Contract activities, upon a showing of valid credentials to the Contractor. The Contractor shall permit access to premises according to such a list, which the Contracting Officer shall keep current.

C. Audit Requirements

- 1) General
 - a. The Contractor shall maintain current books of account, records, documents, and other evidence pertaining to its managerial, financial, and operational policies, procedures, functions, and processes.

- b. All records, books of account, papers, and supporting documents of the Contractor, any affiliates or parent companies which may allocate or share expenses or assist or provide for the Contractor's meeting the Financial Criteria identified in Exhibit E, Additional Provision, Section 29, Financial Criteria, or any subcontractor providing services to the Contractor shall be open to inspection during normal business hours by the CDHS, its authorized representatives, or by other CDHS or federal agencies with statutory or regulatory audit authority.
 - c. All such records, books and papers described above shall be available for review in the State of California within five (5) business days of request except in such instances where the Contractor's headquarters is located outside California and such documents cannot be reasonably expected to be made available for review in California.
 - d. In order to examine the Contractor's records, books of account, papers, and documents as may exist outside the State of California, the CDHS may, upon reasonable notice, require that such records, books of account, documents, and papers, or a specified portion thereof, be made available for examination in this CDHS or that with a certification statement, a true and accurate copy of such records, books of account, documents and papers, or a specified portion thereof, be furnished to the CDHS within five (5) business days of receipt of request.
 - e. The books of account, records, documents, and other evidence pertaining to the Contractor's managerial, financial, and operational policies, procedures, functions, and processes shall not be removed from the State of California without prior written consent of the Contracting Officer.
 - f. The Contractor's accounting procedures and practices shall conform to generally accepted accounting principles. Costs applicable to the Contract shall be separately identifiable and readily ascertainable there from. Revenue and expense records pertaining to the Contract shall be in sufficient detail to readily identify revenue source and all direct and indirect costs under the provisions of the Contract.
 - g. All books of account, records, and documents shall be maintained separately for the HPE Process.
 - h. The requirements of Title 48, Code of Federal Regulations, Part 31, shall be applied in determining the allowable direct and indirect costs incurred by the Contractor for cost reimbursable work performed on the Contract or work ordered by a Change Order or Amendment.
 - i. This Provision shall be incorporated in any subcontract of ten five thousand dollars (\$5,000) or more. It shall also be incorporated in any subcontracts entered into with one (1) entity or affiliates where the total dollar value of all such subcontracts exceeds five thousand dollars (\$5,000).
 - j. If a parent corporation(s) is utilized by the Contractor in meeting Exhibit E, Additional Provision, Section 8, Avoidance of Conflicts of Interest by Contractor, requirements, the above provisions shall be applicable to that parent corporation(s) as well.
- 2) Access to and Audit of Contract Records
- a. In addition to the requirements found in Exhibit D (F), Special Terms and Conditions, Provision 7, Audit and Record Retention, the Contractor and subcontractor(s) shall:

- i. Preserve and make available all records pertaining to this Contracts for an additional period of three (3) years from the date of final payment under this agreement; and
 - ii. Promptly notify the Contracting Officer of any request for access to any HCO Program Operations records by any governmental agency or any other entity.
- b. Should the CDHS direct the Contractor to contract for the audit, and should the audit or examination find that the Contractor is not fulfilling its responsibilities according to the terms of the Contract or that reports furnished in compliance with the provisions of the Contract are not true and correct, the CDHS shall have the right to invoke any remedy available under the Contract or under law or equity. Should an audit or examination described above find that the Contractor has received payment to which it is not entitled under the Contract; such payments may be recouped by the CDHS subject to the Contractor's right to dispute the recovery as set forth in Exhibit E, Additional Provision, Section 40, Notification of Claims. Based on an audit or examination, the CDHS may seek recovery, through offset or legal action, following termination or expiration of the Contract.

3. Accounting Requirements

The Contractor shall establish accounting policies and procedures, maintain records, and supply reports periodically and as requested by the Contracting Officer. Accounting policies and practices shall be in accordance with generally accepted accounting principles. The Contractor shall be responsible for establishing and maintaining additional accounting policies, procedures, and records as required controlling and documenting its fiscal activities. These accounting procedures shall remain the same for the entire Contract period, unless prior approval of changes is received from the Contracting Officer.

The CDHS encourages the Contractor to employ new technology whenever possible utilizing best-practice characteristics in order to provide an efficient, streamlined accounting/document processing solution versus manual processes.

A. Accounting Procedures Inclusions

The accounting procedures, policies and records shall include, but not be limited to, the following:

- 1) Definitions of accounting relationships with other government Contracts, related business organizations, and subcontractors;
- 2) Procedures for personnel time reporting;
- 3) Procedures for reporting travel expenses;
- 4) Procedures to order and pay for goods and services; and
- 5) A cost accounting system in conformance with Title 48, Code of Federal Regulations, Part 31, which details costs by all contractual categories.

B. Accounting Records Supplied to the CDHS

Specific accounting records and practices shall be subject to federal and State acceptance. At the Contracting Officer's request, the Contractor shall provide to the CDHS all fiscal records. These records shall include, but not be limited to, the following information:

- 1) The Contract accounts receivable and accounts payable items on the balance sheet disclosing transactions with related organizations. In addition, a list detailing all debtors and creditors with their outstanding balances shall be included with the financial statements.
- 2) The statement of changes in financial position disclosing all significant transactions affecting the Contractor's financial position during the year;
- 3) Inventories of all fixed assets and equipment, in accordance with Exhibit E, Additional Provisions, Section 36, Inventory and Treatment of CDHS Property;
- 4) A summary of total operating revenue by source; and
- 5) All requirements listed in Exhibit E, Additional Provisions, Section 29, Financial Criteria.

C. Accounting Ledgers

The Contractor shall maintain separate sets of accounting ledgers exclusively for the Contract and in connection therewith, identify, collect and separate costs by the following:

- 1) Takeover expenses;
- 2) Operations expenses;
- 3) Additional Contractual Services;
- 4) Hourly Reimbursement, including employee timesheets;
- 5) Change Orders;
- 6) Amendments;
- 7) Turnover expenses; and
- 8) Cost Reimbursement expenses by category.

The Contractor will provide the CDHS online, real-time database access of these accounting ledgers via the desktop computer to CDHS staff identified by the Contracting Officer. The site where the desktop computers will be available to access these accounting ledgers will be determined by the CDHS.

Separate records must also be maintained for postage incurred for:

- 1) Packets;
- 2) Letters; and
- 3) Miscellaneous mailings.

D. Estimated Expenses

At the Contracting Officer's request, the Contractor shall submit to the CDHS a projected statement of total expenses associated with the Contract for each State fiscal year broken down

by all contractual payment categories Takeover, Operations, Additional Contractual Services, Hourly Reimbursement, Change Orders, Turnover, and Cost Reimbursement, nine (9) months prior to the beginning of each State fiscal year. A revised estimate shall be furnished four (4) months prior to the beginning of the fiscal year.

E. Actual Expenses

At the Contracting Officer's request, the Contractor shall submit quarterly fiscal progress reports relating the actual expenses to estimated expenses for all contractual payment categories. These reports shall indicate:

- 1) Current quarterly estimated and actual expenditures;
- 2) Year-to-date estimated and actual expenditure; and
- 3) Life (beginning of Contract to date) estimated and actual expenditures.

F. Financial Management Manual

The Contractor shall maintain and update, as necessary, a financial management manual during the life of the Contract that includes:

- 1) All the data specified in the HCO Program Operations Financial Management Manual, available during the procurement of the Contract in the Data Library; and
- 2) All requirements specified in Exhibit A, Attachment I, Takeover.

4. Application to Parent Entities, Corporations and Subcontractors

The application of access, audit and accounting requirements in this Exhibit that apply to any parent corporation(s) and subcontractors is set forth below.

A. Application to Parent Entities and Corporations

The Contractor shall be responsible for ensuring that the provisions of this Exhibit shall apply to any parent entity(s) or corporation(s) which provide(s) funds or services to the Contractor to meet its obligations under the Contract or whose resources are utilized by the Contractor to meet the minimum financial criteria in Exhibit E, Additional Provisions, Section 30, Financial Reporting Requirements.

B. Application to Subcontractors

The Contractor shall include the provisions of applicable sections contained in Exhibit D (F) Special Terms and Conditions in all subcontracts under the Contract.

5. Affiliates

For purposes of this section, business concerns are affiliates of each other when, either directly or indirectly, (a) one (1) concern controls or has the power to control the other; (b) a third party controls or has the power to control both; or, (c) senior management who has the power to control both.

Information regarding affiliates of the Contractor as defined above, shall be submitted to the Contracting Officer as part of its Narrative Proposal and no less often thereafter than annually, by

January 15th, in writing, unless a change to previously submitted information occurs. In the event of such a change, the Contractor shall have ten (10) calendar days from the date on which the change is finalized to notify the Contracting Officer in writing. The affiliate information document submitted shall include: the names and addresses of all affiliates of the Contractor; the names and addresses of all persons and concerns exercising control or ownership over the Contractor, or over one or more of its affiliates; and the nature of the control exerted by those persons and/or concerns (do they function as common officers, directors, stockholders with a controlling interest, or in some other controlling capacity?).

6. Assignments

The Contractor shall not assign the Contract in whole or in part or any payment arising there from without the prior written approval of the CDHS. It is the policy of the CDHS to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the CDHS likelihood of receiving sufficient performance under the Contract.

The CDHS does not normally object to the granting of assignments for financial purposes, such as the payment of rent and other charges to third parties, provided that the original Contractor retains all of its responsibilities and obligations under the Contract. Accordingly, the CDHS agrees that it will not unreasonably withhold approval where (1) a requested assignment is only of the right to receive payments, and (2) none of the Contractor's duties, responsibilities, and obligations under the Contract are affected by the assignment.

All CDHS-approved subcontracts to the prime Contract shall contain a provision holding that further assignments shall not be made to any third or subsequent subcontractor without additional written consent from the CDHS.

7. Authority of the CDHS

Sole authority to establish, define, or determine the reasonableness, necessity, level and Scope of Work under the program administered through this Contract, or the eligibility of beneficiaries to participate in that program, shall reside with the CDHS.

Sole authority to establish or interpret policy and its application related to the above areas shall reside with the CDHS.

The Contractor may not, without the prior written approval of the Contracting Officer, enhance, limit, or change in any other manner, those aspects of the HCO Program controlled by the operation of the HPE process, except to apply emergency fixes, as described in Exhibit A, Attachment II, Section 10, Health Plan Enrollment Process.

8. Avoidance of Conflicts of Interest by Contractor

A. CDHS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDHS review and prior approval.

B. Conflicts of interest include, but are not limited to:

- 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise,

whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.

- 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) business days from the date of notification of the conflict by CDHS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDHS and cannot be resolved to the satisfaction of CDHS, the conflict will be grounds for terminating the Contract. CDHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

9. Bonding

Evidence of the fidelity bond or other security required by this section must be submitted to the Contracting Officer prior to the CED.

- A. If the required bonding is not to be provided by a third party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than standard insurance from a third party carrier must be submitted to the Contracting Officer in writing within ten (10) calendar days after the notice of intent to award the Contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with the Contract requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third party carrier must be obtained and evidence of coverage submitted to the CDHS within fifteen (15) calendar days of the denial of approval;
- B. A fidelity bond or other security shall be maintained by the Contractor and subcontractors for at least one million dollars (\$1,000,000) per loss covering every employee except those classifications of employees as the Contracting Officer may exempt upon proper justification and request by the Contractor. The fidelity bond or other security shall be maintained by the Contractor and subcontractors in a form satisfactory to the CDHS and must include the following conditions:
 - 1) Loss, if any, under the bond shall be payable to the CDHS;
 - 2) Any bond shall provide for thirty (30) calendar days prior written notice to the CDHS of intent to cancel or to make any other change, including, but not limited to the status, coverage or scope of the required bond or of the Contractor's failure to pay premiums; and
 - 3) The CDHS shall not be responsible for any premiums or assessments on the policy.

The policy shall not provide exclusions for the acts of officers.

10. CDHS Approval of Deliverables

The Contractor shall submit all deliverables to the CDHS for review and approval. All approvals, deliverables pending Contractor correction, or disapprovals from the CDHS shall be in writing. If the CDHS rejects a deliverable as unacceptable, the Contractor shall make required corrections within the time required by the Contracting Officer.

All written deliverables, including Contractor correspondence, received by the CDHS after 2:00 PM will be date-stamped as received the next business day.

Despite the fact that the CDHS has approved the design of or approved and accepted the deliverable, product or service, the following shall apply:

- A. The Contractor shall not be relieved from its obligation to provide deliverables, products or services which meet the specifications of the Contract, C-Letters, Change Orders, Amendment, Systems Development Notices, or any other official letter, or other request of the CDHS; and,
- B. If a deliverable, product or service is ultimately found not to meet the designated specifications, and the Contracting Officer has not otherwise specifically and formally agreed to the variation from the designated specifications in writing, the Contractor shall remedy this problem at no expense to the CDHS. The Contracting Officer's approval of a deliverable, product or service shall not be viewed as constituting an agreement to vary specifications unless accompanied by a C-Letter or a SOIL to this effect approving the variation and signed by the Contracting Officer.

Failure of the Contractor to obtain written CDHS approval shall not relieve the Contractor of its obligation to perform Contract responsibilities or to provide required deliverables to the CDHS.

11. CDHS Right to Equitable Adjustment

Whenever the CDHS requires services, goods, equipment, facilities or capabilities under the terms of the Contract, the cost for which is included in the bid price(s) or is cost reimbursable, and the Contractor fails to perform or provide the services, goods, equipment, facilities, capabilities, or substitutes other services, goods, equipment, facilities, or capabilities which are not fully equal to those required under the Contract and which are not acceptable to the Contracting Officer, the CDHS may require the Contractor to correct its performance within a period of thirty (30) calendar days, or such longer period as may be granted by the Contracting Officer. If the Contractor has failed to correct its performance during this period, the Contracting Officer, at its sole discretion, may make an immediate, equitable adjustment to recover the cost of services, goods, equipment, facilities or capabilities not provided or performed from administrative payments due the Contractor which stem from the bid price(s) or may implement a cost-savings Change Order in accordance with Exhibit E, Additional Provisions, Section 24, Cost Reduction Change Proposals. Upon notification from the Contracting Officer, the Contractor shall fully document the change and submit this documentation together with certified cost and pricing data to the Contracting Officer in the time period requested.

This remedy shall be in addition to and not in lieu of any other remedy provided to the CDHS in the Contract or by law.

12. CDHS Ownership

The CDHS does not own the HPE Process used by the Contractor or any subcontractor under the Contract.

- A. The CDHS ownership rights shall extend, but not be limited to:

- 1) All data files and form designs;
 - 2) All user and operation manuals and other documentation, including but not limited to data entry manuals, enrollment/disenrollment processing manuals, reports generated by the Contractor, Medi-Cal policy manuals, systems, and financial related manuals; and
 - 3) All software and hardware, which were purchased by the CDHS via cost reimbursement.
- B. All licenses are to be obtained in the Contractor's name but must include an option for transferability either to a subsequent contractor or to the CDHS. Where a license cannot be transferred, the Contractor shall, if requested by the Contracting Officer, assist the CDHS in obtaining licenses of its own.
- C. All software shall be able to run on hardware that is sold to the general public in substantial quantities.
- D. The Contractor shall not, without prior written approval from the Contracting Officer, contract or subcontract with any outside organization for the purpose of operating the HPE Process to process enrollments, disenrollments or exemptions, or to conduct any of the activities listed in Exhibit E, Additional Provisions, Section 50, Waiver of Contract Provisions.
- E. The CDHS owns all documents, communications, and materials received by the Contractor from health plans, providers and beneficiaries; all documents, materials, and reports generated through the HPE Process processing; and all documents, materials, and reports produced by the Contractor from any information, communication or material received from the CDHS.

The provisions of this article shall be incorporated in any subcontract, which relates to the subject matter of this article.

13. Cancellation / Termination

- A. This agreement may be cancelled by CDHS without cause upon thirty (30) calendar days advance written notice to the Contractor.
- B. CDHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDHS substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

14. Change Orders

This Provision shall apply in cases where the CDHS alters the amount of responsibilities required under the Scope of Work or reallocates functions within the Scope of Work of the Contract, resulting in an increase or decrease of the fixed bid price. Change Orders will be utilized in cases where an adjustment is needed to the Contractor Scope of Work and/or payment.

A. Change In Fixed Bid Price

The Contractor's bid prices will remain in effect for required work through the end of the Contract. In the event that the CDHS alters the amount of work required or reallocates functions within the general scope of the Contract (which the CDHS, at its sole discretion, may do at any time during the term of the Contract), in such a way as to cause a documentable increase or decrease in the required effort of the Contractor, such action by the CDHS shall be taken through a Change Order. As used in this Provision, "documentable" means that quantitative evidence can be presented to support the proposition that there is an "increase or decrease."

The following four (4) conditions will not be justification for adjustment to the bid prices:

- 1) Implementation by the Contractor of instructions contained in HCO C-Letters or other changes which would normally be made as part of the Contractor's responsibility;
- 2) Execution of a Contract responsibility for which the Contractor is already receiving reimbursement;
- 3) Changes in volumes that are within the ranges defined in Exhibit B, Budget Detail – Payment Provisions; and
- 4) Design, Development & Implementation (DD&I), maintenance, or other activities defined in the Contract as part of the contractual responsibilities, and
- 5) Additional Contractor Services (ACS) proposed by the Contractor.

B. In determining whether a price adjustment is necessary, consideration shall first be given to:

- 1) Whether this effort has been offset by the implementation of cost reduction changes initiated by either the Contractor or the CDHS, as described in Exhibit E, Additional Provisions, Section 24, Cost Reduction Change Proposals; and
- 2) Whether there are alternate means for implementing the change or whether there are resources being used elsewhere which can be made available for the change.

If the total cost for the adjustment exceeds the saving of the actions listed in (1) and (2), above, the Change Order process shall be utilized to compensate for the increased cost, plus overhead and profit.

C. Change Order Implementation

This Provision is intended for use in the case of a change in the amount of the Contractor's responsibilities that fall within the Scope of Work. If a change in the amount of the Contractor's responsibilities is proposed, the Contracting Officer shall issue a Change Order via a C-Letter

and specify the date of implementation, subject to Exhibit E, Additional Provision, Section 14.E, Contractor- Initiated Change Orders.

D. Change Order - Contractor Requirements

All Additional Provisions of the Contract shall apply to each Change Order, unless specifically modified by that Change Order.

The Contractor shall provide to the Contracting Officer within thirty (30) calendar days of receipt of the Change Order, a written statement that:

- 1) The change has no price impact on the Contractor; or
- 2) There is a price impact, in which case the statement shall include a completed Cost Proposal Form, Attachment 17, for each phase of the change including DD&I if DDI is not performed/implemented by the fixed price staff. In addition, the Contractor shall submit with this form any information required to explain the Contractor's estimating process, including:
 - a. The judgmental factors applied, and the mathematical or other methods used in the estimate, including those used in projecting from known data;
 - b. The assumptions used by the Contractor in developing the proposed price;
 - c. The methodology and justification for the calculation for general and administrative expenses, overhead costs and allocations, and profits, including the date of the data used for this calculation; and
 - d. A work plan.

The CDHS shall negotiate with the Contractor to reach agreement on Change Orders. In cases where additional information is required, the Contractor shall provide needed information within ten (10) calendar days of request. After the parties reach an agreement, the C-Letter, to include any written correspondence reflecting an agreement in the change of the fixed bid price, shall be incorporated into the Contract. If the parties are unable to reach an agreement, the Contracting Officer shall order the implementation of the Change Order and make a determination of the revised prices. The Contractor shall proceed with the work as thus changed, subject to the Contractor's right to dispute the Contracting Officer's determination of the price, pursuant to Exhibit E, Additional Provision, Section 27.H, Contractor's Right to Appeal.

In the event that legislation or court orders require that the work begin before the Contractor can provide the written statement, the Contractor, at the direction of the Contracting Officer, shall begin the work while simultaneously preparing the written statement.

E. Contractor- Initiated Change Orders

The Contractor shall not institute any modification to its procedures, operations, or organization that would directly or indirectly increase the cost to the CDHS without first:

- 1) Submitting a written statement of the type described in Exhibit E, Additional Provision, Section 14.D, Change Order – Contractor Requirements; and
- 2) Receiving approval in writing from the Contracting Officer to institute the modification.

F. Change Order Approvals

- 1) All increased costs of performance attributable to Contractor-initiated Change Orders incurred prior to receipt of such written approval as set forth above shall be disallowed.
- 2) A Change Order must be approved by the California Department of General Services and the California Department of Finance, if the Change Order:
 - a) Costs the CDHS in excess of seventy-five thousand dollars (\$75,000) for DD&I (excluding DD&I performed/implemented by fixed price staff); or
 - b) Results in a one-time (1-time) operations cost of more than seventy-five thousand dollars (\$75,000).
- 3) The California Department of Finance review may also require a thirty (30) calendar day notice to the Legislature before approval; and
- 4) If the Change Order causes a one-time (1-time) cost to the CDHS of more than two hundred and fifty thousand dollars (\$250,000), it shall be subject to review by the California Legislature.
- 5) Change Orders shall be subject to Centers for Medicare and Medicaid Services (CMS) review.

15. Conformance with State and Federal Statutes and Regulations

- A. The Contract is subject to Title 19 of the federal Social Security Act (42 U.S.C.1396 et seq.) and, accordingly, the Contractor agrees to comply with such requirements and related regulations on the date the Contract becomes effective, to include all future amendments to the law, regulations or guidelines, provided that:
1. Changes required for compliance with State and federal law that would materially affect costs of performance shall only be implemented with prior written approval of the Contracting Officer pursuant to the Contract; and
 2. No confidential data is to be released without prior, written CDHS approval.
 3. In addition, the Contractor shall comply with the requirements of the State of California and federal law, to include related regulations and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Contract. These authorities include, without limitation, the California Welfare and Institutions (W&I) Code, the California Government Code, the California Public Contract Code, Title 42, US Code, the Code of Federal Regulations, Title 2 and Title 22 of the California Code of Regulations, State Administrative Manual (SAM), Health Administrative Manual (HAM) and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191, dated August 21, 1996). (See also Exhibit H, HIPAA Business Associate Addendum.)
 4. The Contractor shall employ an Information Security Officer and Privacy Officer who shall have the following qualifications:
 - a. The Information Security Officer (ISO) shall have a minimum of five years experience in computing or related area, with a focus on information security, technology, management and policy; experience in the development and implementation of planning security policy,

procedure, and/or safeguards; extensive knowledge of security administration and computer security tools; successful experience in retrieving, analyzing, reporting, addressing and/ or tracking security intrusions and vulnerabilities; demonstrated knowledge in systems design, development, documentation, testing, implementation and/or maintenance; demonstrated ability to work effectively with technical and non- technical managerial and professional staff.

In addition, the ISO shall possess the following skills: Bachelor's Degree in Computer Science, Computer Information Systems, Management Information Systems, Business Administration, Public Policy, Law or a related field; an advanced degree in a field related to information security; three or more years experience in at least 3 of the following domains in the Certified Information Systems Security Professional certificate: 1) Access control systems and methodology; 2) Application and systems development security; 3) Business continuity planning & disaster recovery planning; 4) Cryptography o Law, investigation and ethics; 5) Operations security; 6) Security architecture and models; 7) Security management practices; 8) Telecommunications and networking; proven technical and functional problem solving, tracking and resolution skills; ability to manage complex projects; experience in technology management or information security in both government and healthcare environments; and, one or more of the following certifications: PMP (project management professional), GIAC (global information assurance certificate), SSCP (systems security certified practitioner), CISA (certified information systems auditor), CISSP (certified information systems security professional).

b. The Privacy Officer shall have a minimum of five years experience in corporate privacy activities which include overseeing the establishment, implementation and adherence to corporate policies on patient privacy, confidentiality and release of patient information; experience developing, conducting and reporting privacy risk assessments and internal privacy audits; experience overseeing the development and delivery of privacy training and awareness in a government and/or healthcare setting.

In addition, the Privacy Officer shall possess the formal education equivalent to a bachelor's degree in public administration, business administration, or a related field, plus four years' experience in program organization and administration; an advanced degree in a field related to information security or information technology; experience implementing the Health Insurance Portability and Accountability Act of 1996 Privacy Rule; experience managing patient privacy-disputes and requests for changes to their medical record; knowledge of standard audit procedures; and, one or more of the following certifications: PMP (project management professional), GIAC (global information assurance certificate), SSCP (systems security certified practitioner), CISA (certified information systems auditor), CISSP (certified information systems professional).

16. Contract Amendments

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes are subject to the CDHS official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the CDHS and the Department of General Services.

17. Contract Communication

- A. Any notice required by the Contract shall be written and sent by registered or certified mail, return receipt requested, or shall be delivered in hand and a receipt given by the recipient, and shall be effective upon receipt by the Contracting Officer or the Contractor, whichever is the addressee. All notices, including correspondence and reports, shall also be submitted to CDHS electronically, in a manner designated by CDHS.
- B. Notwithstanding any other provision of the Contract, any contracting approvals must be received in writing by the Contractor prior to the Contractor taking any action requiring such approval, unless the Contracting Officer specifically exempts, in writing, the Contractor from this requirement.
- C. In addition to the terms of this Contract the CDHS shall be bound only by Contract letters (C-Letters), unless otherwise specified in this Contract. These C-letters represent the CDHS direction to the Contractor; are issued by the Contracting Officer, or his or her representative, over the Contracting Officer's signature block; and are sequentially numbered. The Contractor shall respond with its own set of sequentially numbered letters issued by the Contractor Representative or designee, which shall bind the Contractor.
- D. Discussions concerning actions the Contractor will be expected to take under Contract can and must occur. Even when such discussions lead to decisions about specific actions that the Contractor will be expected to take, however, no actions are to be taken in the absence of written instruction, in the form of a C-Letter.

In cases where prompt action is necessary, written instructions to the Contractor can temporarily take the form of an e-mail from the Contracting Officer or authorized designee only. However, e-mails must be confirmed by C-Letters. In such cases, the e-mail is to be retained by both the parties as verification that the action taken was in response to a proper written request.

- E. Contractor letters that are received by CDHS after noon of a business day shall be considered as received the following business day. As such, they will be date stamped with the following business day's date.
- F. The Contractor shall provide delivery services twice daily between the Contractor's main operating facility and the East End Complex.

The Contractor and the CDHS shall respond to each other within ten (10) business days, or a time period which may be shorter or longer as designated by the Contracting Officer.

18. Contract Term

- A. The Contract term shall extend from the CED for four (4) years, six (6) months and three (3) --- one (1) year optional extension phases, through Contract Termination Date (CTD), which is three (3) months after Operations end. This timeframe includes a twelve (12) month time period for Takeover, in accordance with Takeover requirements, a three (3) year, nine (9) month time period for Operations, extendable up to three (3) years, and a fifteen (15) month time period for Turnover.

Takeover begins on January 1, 2008, or at CED if the Contract is executed later than January 1, 2008. The first (1st) phase of Operations will begin on October 1, 2008, and end on June 30, 2009, which is nine (9) months versus one (1) full year (twelve (12) months). Subsequent

Contract years will begin on July 1 and end on June 30, said dates to coincide with the State's fiscal year period. The Contract may continue through September 30, 2015, if all three (3) optional extension phases are used. The agreement term may change if the CDHS makes a successor Contractor selection earlier than expected or if the CDHS cannot execute the agreement in a timely manner due to unforeseen delays.

- B. The resulting Contract will be of no force or effect until it is signed by both parties and approved by the Department of General Services, if required. The Contractor is hereby advised not to commence performance until all approvals have been obtained. Should performance commence before all approvals are obtained, services may be considered to have been volunteered.
- C. The three (3) year Operations period will commence on October 1, 2008, subject to the CDHS acceptance of the Contractor's readiness to perform enrollment and disenrollment processing, and all associated HCO Program functions. If enrollment and disenrollment processing and/or all associated HCO Program functions are delayed, the CDHS may, at its option, either (1) shorten the Operations Period by the amount of the delay, or (2) require the Contractor to adhere to the first (1st) nine (9) month year and subsequent two (2) full years Operations period. In the event the CDHS selects option (2) above, all timeframes related to the Turnover phase will be delayed by the same amount of time as the delay of enrollment and disenrollment processing and/or all associated HCO Program functions. The Operations period will be subdivided into one (1) nine (9) month phase and two (2), one (1) year phases.
- D. The Contracting Officer shall have the exclusive option to extend the term of the Contractor's Operations during the last year of the existing Contract period of performance the CDHS, with the approval of the Department of General Services. CDHS may decide to extend the Contract for up to three separate extensions of one (1) year each. Additionally, as described in Exhibit B, Attachment 1, Section 1.11, Extended Operations, the CDHS may exercise a one-time 'Extended Operations' period for the Contract for a period no shorter than six (6) months, but up to one (1) year. Either the final one (1) year extension period (when exercised) or the period of Extended Operations, if any, will be followed by a commensurate extension of time for Turnover. The Contractor shall be given at least a 60-day notice if the CDHS chooses to extend the Contract through a formal Contract amendment.

During any of the extension periods addressed above and during any period of Extended Operations, the Contractor's responsibilities shall remain the same as are defined in the Contract. Unless the CDHS elects an Extended Operations period of less than one year, the Operations period shall terminate on June 30 of the final year.

19. Contractor Certification

With respect to any report, invoice, record, paper, document, book of account, or other Contract-required data, submitted, pursuant to the requirements of the Contract, the Contractor's Representative or his/her representative shall certify that the report, invoice, record, paper, document, book of account or other Contract-required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by the CDHS in writing.

Where in the Contract there is a requirement that the Contractor "certify" or submit a "certification," such certification shall be in the form of an affidavit or declaration under penalty of perjury dated and signed by the Contractor's Representative or his/her authorized representative.

20. Contractor Employees

During the term of the Contract, the CDHS reserves the right to review any personnel changes the Contractor seeks to make at the Contractor Representative or senior management levels. For the purposes of this section, senior management shall include all Contractor personnel having direct managerial and administrative responsibility for, and control of, one or more of the functional areas described in Exhibit A, Scope of Work. These individuals shall report to the Contractor's Representative. However, one intervening management level may occur between these individuals and the Contractor's Representative if these intermediate managers report directly to the Contractor's Representative and are also designated as senior management as described in this section. All additional staff who directly report to the Contractor's Representative shall be considered senior management and subject to this section.

- A. All members of the senior management team described above shall be stationed at the Contractor's Sacramento main operating facility, and the Contractor shall assign these management personnel full time solely to the work of this Contract. Neither the Contractor Representative nor any senior managers shall be assigned any duties unrelated to this Contract. When it submits its Narrative Proposal, the Contractor shall commit to retaining its Contractor Representative for no less than three (3) years from the CED, and its senior management team for no less than two (2) years from the CED, except for voluntary departures. This provision applies to management team members employed by the Contractor.

The Contractor shall replace senior managers only after thirty (30) calendar days have elapsed from the date on which written notice of the proposed replacement was provided to CDHS, unless written CDHS approval for a different time interval has been obtained from CDHS. During this period, the Contractor shall consult with CDHS concerning the qualifications of the proposed replacement, the duration of transition periods, and other specific actions to be taken to ensure that performance under the Contract is not adversely impacted.

Any person assigned as a replacement Contractor Representative shall be assigned to the Contract for at least two (2) years, with the following exceptions:

- a. If that person leaves the employment of the Contractor, its affiliates, or subcontractors;
- b. Less than two (2) years remain on the Contract, in which case the assignment must remain in effect through the term of the Contract.

CDHS will review senior management team and Contractor Representative replacement candidates to ensure that all replacements possess technical knowledge, experience, and qualifications comparable in scope, breadth, and depth, to the individuals originally accepted as part of the Contractor's Narrative Proposal. The review will also be made to better ensure that individuals replacing staff in these key positions have the ability to develop cooperative and constructive working relationships with their co-workers and with CDHS staff in the performance of their duties.

Conviction for a felony involving illegal gain or the illegal use of government funds, grants, Contracts, or Medicaid or Medicare monies, or a conviction for fraud, embezzlement, wire fraud, mail fraud, or a securities violation shall disqualify an applicant or employee from work under the Contract.

The CDHS, at its discretion and consistent with any State or federal laws concerning civil rights, may require the Contractor to submit fingerprints for its employees.

21. Contractor Resources Level

The Contract requires that the Contractor meet all the contractual requirements and responsibilities listed herein. The Contractor shall provide sufficient resources including staff and staff support to fully execute all responsibilities required under the Contract. Contractor staff, who are hired to work on the HCO Contract shall work on this Contract and this Contract alone. No staff shall be assigned duties unrelated to this Contract without the prior written consent of the CDHS.

Once per month, by the fifth (5th) business day of the month, the Contractor shall provide CDHS with two (2) staffing reports. The first (1st) report shall consist of an organizational chart, depicting each position by staff name, classification, and employee identification code, and shall be in the same format as the included in the Personnel Acquisition Plan and Organizational Structure Chart submitted and approved by CDHS at the completion of Takeover. The second (2nd) report, The Hiring Progress Report, shall provide the number of staff by function and classification currently working on the Contract. These numbers will be compared to the staffing levels by function and classification proposed in the Narrative Proposal, as modified with the approval of the Contracting Officer. This report shall be in the same format as submitted during Takeover. This report shall also show staffing by function and classification for the past twelve (12) months, beginning with the first (1st) prior month.

22. Contractor's Facilities

The Contractor is required to perform all work specified in the Contract and to acquire it's main operating facilities (which houses all internal and systems operations) in accordance with Exhibit A, Attachment I, Takeover, within a thirty (30) mile radius of the State Capitol building in Sacramento. This provision shall not apply to subcontractors and the work they perform in this Contract. This thirty (30) mile radius shall be calculated not by direct line miles but by actual miles to be driven in a car using readily accessible freeways. The Contractor shall be required to have this facility fully installed within four (4) months and two (2) weeks after the CED. However, beginning with the CED, all required HCO Takeover activities shall take place within the thirty (30) mile radius.

The CDHS shall have the irrevocable right to lease the HCO facilities utilized in performance by the Contractor under the Contract beginning at the end of the Contract operations period, or in the event of contract termination for a term of up to seven (7) years. The CDHS and the Contractor agree to negotiate in good faith to develop and agree to the terms and conditions of a lease. The rental for the facilities shall not exceed the fair market rent for comparable facilities in the same geographic area as determined by the State Department of General Services.

All work performed under the Contract shall be performed in the State of California. The building floor space area used to house the Contractor's HCO Program Operations shall be contiguous. No other uses are to be allowed within the HCO Program Operations contiguous building space.

23. Cost or Pricing Data

Notwithstanding the requirements in the Federal Acquisition Regulations (FAR) dealing with dollar limitations for cost and pricing data, the Contractor shall submit and shall require subcontractors hereunder to submit cost or pricing data in accordance with Section 28, Escrow Bid Documents and 48 CFR, Subpart 15.4. Such cost or pricing data shall be submitted on the Cost Proposal form, Attachment 17.

Except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the price is set by law or regulation as these terms are defined in 48 CFR, Subpart 15.403 and in the Contract, this cost or pricing data shall be submitted under the following circumstances:

- A. Prior to the award of any subcontract the total amount of which is expected to exceed one hundred thousand dollars (\$100,000) when entered into;
- B. Prior to the execution of any modification, extension or renewal of any Contract, subcontract, Change Order or Amendment which involves aggregate increases or decreases in cost plus applicable profits which are expected to exceed one hundred thousand dollars (\$100,000) over the Contract or subcontract term; or
- C. Prior to the execution of any Change Order, Amendment or cost reimbursable subcontract in excess of five thousand dollars (\$5,000) in amount.

Notwithstanding the exemptions set forth above, the Contracting Officer may, at his or her sole discretion, require cost or pricing data should it be his or her determination that it is in the best interest of the CDHS to do so.

The Contractor shall maintain records of purchases made which identify the actual cost paid for items or services. In all cost reimbursable areas, the Contractor shall conduct itself as a prudent purchaser in a competitive marketplace.

The Contractor shall certify and shall require subcontractors to certify in a form satisfactory to the CDHS that to the best of their knowledge and belief, the cost or pricing data submitted under this subsection is accurate, complete, and current as of the date of its submittal.

The Contractor shall insert the substance of this subsection, including this paragraph, in each subcontract hereunder, be it cost reimbursable or non-cost reimbursable, which is expected when entered into to exceed five thousand dollars (\$5,000) over its term, except when the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public, or prices set by the law or regulation. These exemptions will apply unless the Contracting Officer requires differently, based on the individual circumstances involved in a given subcontract.

If the Contracting Officer determines that any price, including profit or fee, in any agreement, including, but not limited to, the Contract; any subcontract to the Contract; and/or any Change Order, Amendment or waiver to the Contract, established or negotiated in connection with the Contract, or any cost reimbursable purchase, item, service or subcontract under this agreement was increased by any significant sums because the Contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data, or not current as certified in the Contractor's or subcontractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly by the amount of any excess cost.

Further, the given pricing agreement, including, but not limited to, the Contract; any subcontract to the Contract; and/or any Change Order, Amendment or waiver to the Contract shall be modified in writing to reflect the reduction described in the preceding paragraph. Failure to agree on a reduction shall constitute a dispute concerning a question of fact as described in Section 45, Subcontracts – Relationships between Contractor and Subcontractor, and Cost Reimbursable Purchases.

Because any given pricing agreement may be subject to reduction under this Section by reason of incomplete or inaccurate cost or pricing data submitted in connection with certain subcontracts, the Contractor shall include a clause in each subcontract requiring the subcontractor to indemnify the Contractor as appropriate. Failure of the subcontractor to so indemnify the Contractor shall be grounds for the CDHS to disapprove the proposed subcontract. It is expected that any

subcontractor subject to such indemnification will require similar indemnification for incomplete or inaccurate cost or pricing data required to be submitted by its lower tier subcontractors.

24. Cost Reduction Change Proposals

A. General

- 1) The Contractor is encouraged to develop, prepare, and submit Cost Reduction Change Proposals voluntarily. As provided in this Provision, the Contractor shall share in net Contract savings realized from accepted Cost Reduction Change Proposals.
- 2) Cost Reduction Change Proposals related to services under the fixed price portion of the Contract must be approved by the Contractor prior to implementation under the Change Order process set forth in Exhibit E, Additional Provisions, Section 14, Change Orders. The Contractor shall not implement any cost reduction action that would constitute a change in Contractor responsibilities under Exhibit E, Additional Provision, Section 14.E, Change Order – Contractor-Initiated Change Orders, without first having complied with the provisions of Exhibit E, Additional Provision, Section 14 (See also Exhibit E, Additional Provisions, Section 50, Waiver of Contract Provisions).
- 3) Notwithstanding the provisions of Exhibit B, Attachment 1, Special Payment Provisions, of this Contract, relating to payment of cost reimbursement services under the Contract, the CDHS will share the savings resulting from the implementation of Cost Reduction Change Proposals relating to cost reimbursement services with the Contractor. The purpose of this provision is to provide an incentive for the Contractor to make changes that will reduce costs, even in activities where its costs are reimbursed.

B. Definitions

- 1) **Cost Reduction Change Proposal** means a proposal that:
 - a) In connection with services under the fixed price portion of the Contract, requires a Change Order under the Contract to implement; or
 - b) In connection with services subject to cost reimbursement, has been approved by the Contracting Officer; and in either case,
 - c) Results in reducing the overall projected cost to the CDHS without impairing the Contractor's performance of its duties and responsibilities under the Contract.
- 2) **Contract savings**, as used in this Provision, are the net cost reductions to the Contract, and are equal to cost reductions effected by the Cost Reduction Change Proposal (calculated in accordance with this Provision) less the Contractor's allowable DD&I costs.
- 3) **Net Contract Savings**, as used in this Provision, refer to Contract savings, less CDHS costs.
- 4) **CDHS costs**, as used in this Provision, refer to those CDHS costs that result directly from implementing the Cost Reduction Change Proposal, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the usual and customary administrative costs of processing the Cost Reduction Change Proposal.

- 5) **Contractor's DD&I costs**, as used in this Provision, refer to those costs the Contractor incurs on a Cost Reduction Change Proposal in researching, designing, developing, testing, preparing, and submitting the Cost Reduction Change Proposal to the CDHS. If the CDHS accepts a Cost Reduction Change Proposal, any costs the Contractor incurs making contractual changes to its HCO Program Operations related to the proposal are also considered the Contractor's DD&I costs.
- 6) **Sharing period**, as used in this Provision, refer to the period beginning with acceptance of the Cost Reduction Change Proposal and ending when the term of the Contract ends pursuant to Exhibit E, Additional Provisions, Section 18, Contract Term.

C. Cost Reduction Change Proposal Preparation

At a minimum, the Contractor shall include in each Cost Reduction Change Proposal the information described below:

- 1) Identification of the specific costs that are reduced as a result of the Cost Reduction Change Proposal. This will require that the Contractor document the current cost incurred by the CDHS and the savings resulting from implementation of the Cost Reduction Change Proposal.
- 2) A description of the difference between the existing Contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when a function or characteristic under the Contract is being altered, and the effect of the change on the Contractor's performance.
- 3) A list and analysis of the Contract requirements that must be changed if the Cost Reduction Change Proposal is accepted, including any suggested specification revisions.
- 4) Identification of the Contract services to which the Cost Reduction Change Proposal applies.
- 5) A separate, detailed cost estimate for: 1) the affected portions of the existing Contract requirement; and 2) the Cost Reduction Change Proposal. The cost reduction associated with the Cost Reduction Change Proposal shall take into account the Contractor's allowable DD&I costs, including any amount attributable to subcontracts.
- 6) A description and estimate of costs the CDHS may incur in implementing the Cost Reduction Change Proposal, such as test and evaluation and operating and support costs.
- 7) A statement of the time by which a Contract modification accepting the Cost Reduction Change Proposal must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract compliance time requirements (cycle times, systems and Telephone Call Center availability, etc.).
- 8) Identification of any previous submissions of the Cost Reduction Change Proposal, including the dates submitted, and previous actions by the CDHS, if known.

D. Submission

The Contractor shall submit Cost Reduction Change Proposals in writing to the Contracting Officer.

E. Action by the CDHS

The Contracting Officer shall notify the Contractor of the status of the Cost Reduction Change Proposal within forty-five (45) calendar days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the forty-five (45) calendar day period and provide the reason for the delay and the expected date of the decision. The CDHS will process Cost Reduction Change Proposals expeditiously; however, it shall not be liable for any delay in acting upon a Cost Reduction Change Proposal. The Contracting Officer may request additional information that would be helpful in evaluating the Proposal.

If the Cost Reduction Change Proposal is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any Cost Reduction Change Proposal, in whole or in part, at any time before the CDHS accepts it. Prior to acceptance, the Contracting Officer may require that the Contractor provide written notification before it undertakes significant expenditures for the Cost Reduction Change Proposal development effort.

Any Cost Reduction Change Proposal related to services under the fixed price portion of the Contract may be accepted, in whole or in part, by the Contracting Officer's approval of a Change Order under Exhibit E, Additional Provision, Section 14.E, Change Order – Contractor-Initiated Change Orders, citing Exhibit E, Additional Provision, Section 40, Notification of Claims. Until such a Change Order applies a Cost Reduction Change Proposal to the Contract, the Contractor shall continue to perform in accordance with the existing Contract.

Any Cost Reduction Change Proposal related to services subject to cost reimbursement may be accepted, in whole or in part, by the Contractor's written approval in accordance with Exhibit E, Additional Provisions, Section 17, Contract Communication.

The Contracting Officer's decision to accept or reject all or part of any Cost Reduction Change Proposal, and the decision as to which of the sharing rates applies, shall be final and not subject to Exhibit E, Additional Provisions, Section 27, Dispute Resolution Process, or otherwise subject to litigation.

F. Sharing Rates

If a Cost Reduction Change Proposal is accepted, the Contractor shall share in net Contract savings according to the percentages set forth below.

- 1) The following apply to Cost Reduction Change Proposals that affect the fixed price portion of the Contract:
 - a) If a Cost Reduction Change Proposal is Contractor initiated, net Contract savings shall be apportioned seventy-five percent (75%) to the Contractor and twenty-five percent (25%) to the CDHS. The twenty-five percent (25%) savings shall be applied under Exhibit E, Additional Provisions, Section 14, Change Orders, or, if there are no offsetting changes, the apportioned savings will result in a reduction in Contract prices.
 - b) If a Cost Reduction Change Proposal results from joint efforts on the part of the CDHS and the Contractor, net Contract savings shall be proportionately shared between the parties, the proportioned shares to be determined through an agreement of the parties. In the event that an agreement on proportioned shares cannot be reached within six (6) months of the date the CDHS authorizes the change, the CDHS and the Contractor shall each share fifty percent (50%) of the benefits.

- 2) For Cost Reduction Change Proposals that affect the cost reimbursement portion of the Contract, net Contract savings shall be apportioned between the CDHS and the Contractor as follows:

Cumulative Savings	CDHS Share	Contractor Share
\$5,000 - \$250,000	50%	50%
\$250,001 and above	Percent apportionment negotiable but shall not exceed 50% to the Contractor and shall not exceed a maximum of \$250,000 per improvement.	

For system improvements originated and paid for by the CDHS which decrease the operating expenses or costs, or result in one-time decreased expenses or costs, and which are not utilized to offset changes under Exhibit E, Additional Provisions, Section 14, Change Orders, the financial benefits of those changes shall be one hundred percent (100%) to the CDHS and will result in a reduction of the cost or price of the Contract.

G. Calculating and Documenting Contract Savings

- 1) CDHS costs (such as DD&I costs) shall be offset against the savings generated by the Cost Reduction Change Proposal each time such savings are realized until all costs are fully offset. Then, the Contractor's share is calculated by multiplying net Contract savings by the appropriate Contractor's percentage-sharing rate (see Exhibit E, Additional Provisions, Section 24.D, Cost Reduction Change Proposal – Sharing Rates, above). Additional Contractor shares of net Contract savings shall be paid to the Contractor at the time savings are realized until the Contractor's share is fully realized, subject to Exhibit E, Additional Provisions, Section 24.D, Cost Reduction Change Proposal – Sharing Rates..
- 2) Documentation of Contract savings is the responsibility of the Contractor and is subject to Contracting Officer review and approval prior to payment of the Contractor's share of savings, as allocated using the apportionment methodology described above. The Contractor shall submit a monthly cost savings invoice with appropriate documentation to the CDHS. The Contracting Officer must approve the documentation submitted before payment of the invoice is made. For one-time cost net savings, the Contractor will submit a single invoice with appropriate documentation submitted before payment of the invoice is made.

H. Paying the Net Contract Savings

The Contractor shall pay the DD&I costs of a cost reduction change proposal as specified in this paragraph. The CDHS may initially pay the Contractor's DD&I costs which are cost reimbursable under Exhibit B, Attachment I, Budget Detail and Payment Provisions, Special Payment Provisions, for Cost Reduction Change Proposals which have been accepted by the Contracting Officer. Such costs are then amortized over a twelve (12) month period and shall offset the Contractor's monthly share of savings for the first twelve (12) months following implementation of the proposal. Costs for Cost Reduction Change Proposals resulting in one-time (1-time) cost savings are not amortized. The Contractor's share of the one (1)-time net savings is billable at the time it is achieved.

I. Confidentiality

Confidential trade secret information submitted by the Contractor in support of a Cost Reduction Change Proposal shall be subject to Exhibit E, Additional Provisions, Section 31.D, General Contractor Responsibilities – Confidential Information.

J. Disputes and Notification of Proposal Development

- 1) Disagreements between the CDHS and the Contractor over the calculation or payment of the Contractor's share of the savings realized under a Cost Reduction Change Proposal, or other matters (except as provided in paragraph E. above) shall be subject to the provisions of Exhibit E, Additional Provisions, Section 40, Notification of Claims, as appropriate.
- 2) Disputes over whether a Cost Reduction Change Proposal was Contractor- or CDHS-initiated shall be settled by a comparison of the date or dates on which the Contracting Officer was first notified in writing of the proposed change. For purposes of this section "notification" must consist, at a minimum, of a description of the proposal, the steps necessary to implement the proposal, and an estimate of the costs and savings that are anticipated. General recommendations as to changes or improvements that could result in cost savings will not constitute notification. Notification from the Contractor shall be in accordance with the requirements of Exhibit E, Additional Provisions, Section 17, Contract Communication. Notification from CDHS sources shall be transmitted to the Contracting Officer on Official CDHS letterhead that has been dated and signed. In the event that the Contracting Officer received notification from both CDHS staff and the Contractor on the same date, he or she shall reach a determination as to which party originated the proposal, subject to the dispute resolution provisions contained in Exhibit E, Additional Provisions, Section 40, Notification of Claims.

K. Other Provisions

- 1) At the sole option of the Contracting Officer, the CDHS may assume part of the Contractor's DD&I costs;
- 2) In the event that the Contractor initiates the development, design, or implements changes or improvements in HCO Program Operations under the Contract that do not fall within the scope of this Exhibit E, Additional Provisions, Section 24, Cost Reduction Change Proposals, or other applicable Contract Sections (Section 14, Change Orders; Section 16, Contract Amendments; and Section 34, Informal Scope of Work Changes) the Contractor shall bear all costs;
- 3) Without limitation, this Exhibit E, Additional Provisions, Section 24, Cost Reduction Change Proposals, does not apply to Contractor implementation of Change Orders issued by the

Contracting Officer in direct response to changes in federal or State statutes, regulations, or decisional law subsequent to Contract award. Any savings from these actions shall accrue one hundred percent (100%) to the CDHS; and

- 4) The United States Postal Service, telephone companies' long distance carriers, and high-capacity data line providers (such as AT&T and SBC), other public/private utilities and any other vendors whom the Contractor utilizes for pass-through expenses may enact rate changes that reduce cost reimbursement expenses. Exhibit E, Additional Provisions, Section 24. Cost Reduction Change Proposals, does not apply to such reductions and the Contractor shall not claim a share of the savings resulting from reduced rates from these utilities. Any savings from these rate reductions shall accrue one hundred percent (100%) to the CDHS.

25. Definition of Terms

The parties shall first rely on the definitions provided within the Glossary of Terms (see Appendix 1). If the Glossary of Terms does not define the term, then a definition within the body of the Contract will prevail. In the absence of a definition in the Glossary of Terms and within the body of the Contract, the parties agree to use the usual and customary meaning of a term.

26. Delegation of Authority

The CDHS intends to implement the Contract through a single administrator, herein called the "Contracting Officer." The Director of the California Department of Health Services shall appoint the Contracting Officer. The name of the Contracting Officer and/or the authorized representative shall be issued to the Contractor, within ten (10) business days after Contract Effective Date (CED). The Contracting Officer may delegate the authority to act to an authorized representative through written notice to the Contractor.

The Contractor shall designate a single administrator, herein called the Contractor Representative, who shall be located in the Contractor's main operating facility located in the Sacramento area. The Contractor Representative shall have primary responsibility for managing and administering Operations under the Contract.

The Contractor Representative shall be empowered to legally bind the Contractor to all agreements reached with the CDHS. The Contractor's Representative shall make all determinations and take all actions as are appropriate to implement the Contract, subject to the limitations of the Contract, federal and State laws and regulations.

The Contractor shall designate the Contractor Representative in writing within five (5) business days after CED and CDHS reserves the right to approve that designation. Such designation shall be submitted to the Contracting Officer in accordance with Exhibit E, Additional Provisions, Section 17, Contract Communication. The Contractor Representative may, through prior written notice to the Contracting Officer, delegate the authority to act as the Contractor's authorized representative. This delegation is also subject to approval by CDHS. During the course of the Contract, CDHS reserves the right to approve or disapprove, within thirty (30) calendar days, any replacement of the Contractor's Representative. CDHS approval or disapproval will be conveyed to the Contractor in writing.

27. Dispute Resolution Process

- A. This provision replaces in its entirety and supersedes provision 15 of Exhibit D (F).
- B. If a dispute arises between the Contractor and CDHS, the Contractor must seek resolution using the process outlined below.
 - 1) The Contractor should first informally discuss the problem with CDHS HCO Program Contracting Officer.
 - 2) If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The Contractor's notification shall state on the basis of the most accurate information then available to the Contractor, the following:
 - a) Its notification constitutes a dispute, filed pursuant to this Exhibit E, Additional Provisions, Section 27, Dispute Resolution Process;
 - b) The date, nature, and circumstances of the conduct which is the subject of the dispute;
 - c) The names, phone numbers, functions, and activities of each Contractor, subcontractor, CDHS official or employee involved in or knowledgeable about such conduct;
 - d) The identification of any documents, and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;
 - e) The reasons why the Contractor is disputing the conduct;
 - f) The cost impact to the Contractor directly attributable to the alleged conduct, if any, including:
 - 1. What Contract line item(s) have been or may be affected by the alleged conduct;
 - 2. What labor or materials or both have been or may be added and/or deleted by the alleged conduct;
 - 3. To the extent practicable, what effects on the manner and/or sequence of performance (delay, disruption, or other effects) have been or may be caused by the alleged conduct; and
 - 4. What adjustments to Contract price, delivery schedule, and other provisions are required or have been or may be affected by the alleged conduct.
 - g) If no cost impact is involved, the Contractor's desired remedy.

Notwithstanding the submission of a Notification of Dispute, the Contractor shall diligently continue performance of the Contract (including matters identified in the Notification of Dispute to the maximum extent possible).

C. Waiver of Claims

If the Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, and/or any additionally required information in the manner, and within the time specified in Exhibit E, Additional Provisions, Section 27, Dispute Resolution Process, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any further appeal rights, either under this Contract or at law or equity on such claims.

D. Contracting Officer's Decision

Except as provided in Section 27.E, Dispute of Reimbursable Costs, any disputes concerning performance under the Contract shall be decided by the Contracting Officer, who shall convey his or her decision to the Contractor in writing. The Contracting Officer's written decision will describe the factual basis for the decision and shall be delivered to the Contractor within thirty (30) calendar days of the date on which the Notification of Dispute or any additional substantiating documentation requested by the Contracting Officer was received. The Contracting Officer may extend this submission deadline by explaining to the Contractor in writing why a longer period is necessary. The Contracting Officer's decision shall be final and conclusive unless the Contractor files with the Contracting Officer a written appeal, addressed to the Director of the California Department of Health Services. Any written appeal must be submitted in the manner described within thirty (30) calendar days from the date on which the Contractor received the Contracting Officer's decision. Failure to submit in the manner described, and within the required time frame constitutes a waiver by the Contractor of all claims in accordance with Section 27.B, Dispute Resolution Process– Waiver of Claims.

The Contracting Officer's decision will do one of the following:

- 1) Find in favor of the Contractor, in which case the Contracting Officer may:
 - a) Countermand the earlier conduct which caused the Contractor to file a dispute; or,
 - b) Reaffirm the conduct and, if there is a cost impact, issue a Change Order in accordance with Section 14, Change Orders.
- 2) Deny the Contractor's dispute and, where necessary, provide the Contractor with direction concerning any necessary alterations in its performance under this Contract; or
- 3) If the Contracting Officer is unable to reach a decision based upon the information contained in the Contractor's notification, he or she may request additional substantiating documentation, and shall advise the Contractor as to what additional information is required, and establish how that information shall be furnished.

The Contractor shall have thirty (30) calendar days to respond to the Contracting Officer's request for further information. Upon receipt of this additional requested information, the Contracting Officer shall have thirty (30) calendar days to respond with a decision. Failure to supply additional information required by the Contracting Officer within the time period specified above shall constitute a waiver by the Contractor of all claims in accordance with Section 27.C, Dispute Resolution Process – Waiver of Claims.

E. Dispute of Reimbursable Costs

Where a dispute arises concerning a question of reimbursable costs incurred under the Cost Reimbursement provisions of this Contract, the Contractor shall seek resolution through the

audit procedure as set forth in Title 22, CCR, Provider Audit Appeals, commencing with Section 51016. This procedure shall be the Contractor's exclusive remedy for disputes covered by this subsection.

F. Contractor's Duty to Perform

Pending final determination of any dispute hereunder, the Contractor shall proceed diligently with the performance of its responsibilities under this Contract and in accordance with the Contracting Officer's direction.

G. Appeal for Disputes Totaling \$50,000 or Less

In any appeal by the Contractor of a Contracting Officer's decision under Section 27.D, Contracting Officer's Decision, where the amount in controversy is fifty thousand dollars (\$50,000) or less, the Contracting Officer and the Contractor may agree on the appointment of a single dispute examiner to consider and to decide the dispute.

The Dispute Examiner shall render a written decision on the dispute within thirty (30) calendar days of receiving all pertinent documentation, which period may be extended for an additional thirty (30) calendar days by the Dispute Examiner in extraordinary circumstances. The Dispute Examiner may decide the matter on the basis of documentary evidence alone, without a hearing, and may require either party to produce additional evidence found necessary to the decision.

The Dispute Examiner's decision is final and not subject to appeal to the Director, by either party, except in cases of demonstrated bad faith, fraud, or if unsupported by any reasonable determination of the evidence presented.

If the Contracting Officer and Contractor cannot agree on a Dispute Examiner, the matter shall be processed as an appeal under Exhibit E, Additional Provisions, Section 27.H, Contractor's Right to Appeal.

If no cost impact can be shown to be directly attributable to the conduct under dispute or if there is no amount in controversy, the Contractor and the Contracting Officer should mutually agree what type of appeal will be most appropriate to the circumstances. Failure to reach such agreement shall be resolved by handling the appeal in accordance with Exhibit E, Additional Provisions, Section 27.H, Contractor's Right to Appeal.

H. Contractor's Right to Appeal

In connection with any appeal from a Contracting Officer's decision involving fifty thousand dollars (\$50,000) or more, the Contractor shall be afforded an opportunity to be heard and to offer evidence and oral argument in support of its appeal.

At such hearing, the CDHS may also offer evidence and oral argument in support of its position.

The Director shall appoint a Hearing Examiner or Board composed of not more than three (3) persons to take evidence, hear oral arguments, and make recommendations to the Director as to the proper findings and conclusions to be reached in the appeal. The Hearing Examiner or Board shall take the matter under deliberation at the conclusion of the hearing.

A proposed decision, in a form that may be adopted as the decision of the Director, shall be submitted to the Director and shall be served by the CDHS on each party in the case.

The Director may take any one of the following actions:

- 1) Adopt the proposed decision, without reading or hearing the record;
- 2) Reject the proposed decision and have a decision prepared based upon the documentary and electronically recorded or transcribed record, without taking additional evidence. The Director shall decide no dispute provided for in this paragraph without affording the parties the opportunity to present either oral or written argument; or
- 3) Refer the matter to the Hearing Examiner or Board to take additional evidence. If the case is so assigned, a new proposed decision shall be prepared based upon the additional evidence and the record established in the previous hearing.

In the event of two (2) or three (3) above, a copy of the new proposed decision shall be submitted to the Director for adoption and shall simultaneously be served on each party in the case.

The Director shall render a decision within sixty (60) calendar days after receipt of a proposed decision. The decision shall be final upon adoption by the Director. The right to judicial appeal commences upon adoption of the decision by the Director. The right to appeal terminates sixty (60) calendar days after adoption of the decision by the Director. Adoption is the date the director signs the decision.

The Director may, by delegation order, appoint a designee to exercise the authority under the provisions of this Exhibit E, Additional Provisions, Section 27.H, Contractor's Right to Appeal. There shall be no ex party communication with the Hearing Examiner, Board, or Director concerning this appeal, prior to the Director's decision.

I. Discovery

For Contractor appeals, pursuant to Exhibit E, Additional Provisions, Section 27.H, Contractor's Right to Appeal, Discovery shall be conducted exclusively according to the procedures described in this section. Discovery procedures shall be the same as those provided for in Title 22, CCR, Sections 51032, 51033, 51034, and 51035 which are herein incorporated by reference, with the following exception. Section 51032 (a) is changed to read as follows: "A party, upon written request made to another party, prior to the hearing and within thirty (30) calendar days after the filing of an appeal with the Director, is entitled to:...."

In the event that any provision of these regulations shall be held invalid or unenforceable as applied to the Contract, by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of these referenced regulations as applied to the Contract.

J. Cost of Dispute Shared

Regardless of the outcome, the costs of conducting the dispute and appeal processes, including the Dispute Examiner, Hearing Examiner, or Board, will be shared fifty percent (50%) by the CDHS and fifty percent (50%) by the Contractor. Each party shall bear its own case preparation and presentation costs.

28. Escrow Bid Documents

A. Scope

The Contractor identified in the Notice of Intent to Award shall submit to the CDHS, within three (3) calendar days after the posting of the Notice of Intent to Award, one (1) copy of all documentary information developed by the Contractor in preparation of bid prices for this procurement. This material is hereinafter referred to as "Escrow Bid Documents." The Escrow Bid Documents of the apparent successful Proposer will be held in escrow for the duration of the Contract. All other Proposers not identified in the Notice of Intent to Award shall be prepared to submit Escrow Bid Documents upon request of the CDHS, in the event the Contract is not awarded to the Contractor identified in the Notice of Intent to Award. Escrow Bid Documents will be used to assist in the negotiation for the settlement of claims, in the resolution of disputes, and in Change Order/Amendment pricing. They will not be used for pre-award evaluation of the bidder's anticipated method of operations or to assess the Proposer's qualifications for performing the work.

The successful Proposer agrees, as a condition of award of the Contract, that the Escrow Bid Documents constitute all of the information used in preparation of the bid, and that no other bid preparation information will be considered in resolving claims, disputes, Change Orders and Amendments negotiations. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract.

If the Proposer's proposal is based on subcontracting any part of the work, each subcontractor, whose total subcontract price exceeds the lesser of five percent (5%) of the total Contract price proposed by the Proposer shall provide separate Escrow Bid Documents to be submitted with those of the Proposer. These submittals will be examined in the same manner and at the same time as the examination for the apparent successful Proposer.

B. Ownership and Confidentiality

The Escrow Bid Documents are and will always remain the property of the Proposer, subject only to joint review by the CDHS and the Contractor.

The CDHS stipulates and expressly acknowledges that the Escrow Bid Documents constitute trade secrets, and are proprietary and confidential. This acknowledgment is based on the CDHS express understanding that the information contained in the Escrow Bid Documents is not known outside the Proposer's business, is known only to a limited extent and only by a limited number of employees of the Proposer, is safeguarded while in the Proposer's possession, is extremely valuable to the Proposer, and could be extremely valuable to the bidder's competitors by virtue of it reflecting the Proposer's contemplated techniques of operation. The CDHS acknowledges that the Proposer expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The CDHS further acknowledges that the Escrow Bid Documents and the information contained therein are made available to the CDHS only because such action is an essential element of the Proposer's responsibility. The CDHS acknowledges that the Escrow Bid Documents include a compilation of information used in the Proposer's business, intended to give the Proposer an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

The CDHS agrees to safeguard the Escrow Bid Documents and all information contained therein, against disclosure to the fullest extent permitted by law.

C. Format and Content

Proposer may submit Escrow Bid Documents in their usual cost estimating format. Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use. Escrow Bid Documents shall clearly itemize the estimated costs of performing the work, for each level of work specified in this Contract (e.g., all Takeover activities, HCO Program Operations, Hourly Reimbursement, etc.). Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all labor, equipment, calculations of rate of production and progress, copies of quotations from subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the bidder to arrive at the prices contained in the price proposal. Estimated costs shall be broken down into the Proposer's usual estimate categories such as direct labor, repair labor, material, equipment, equipment operation, expendable materials, materials, and subcontract costs as appropriate, etc. Plant and equipment and indirect costs shall be detailed in the bidder's usual format. The Proposer's allocation of plant and equipment, indirect cost, contingencies, markup and other items shall be included.

All costs shall be identified. For items and sub-items amounting to less than an amount to be determined by the CDHS, the estimated unit costs will be acceptable without a detailed cost estimate, providing that labor, equipment, materials, and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and markup, as applicable, are allocated.

Bidding materials provided by the CDHS shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this provision.

D. Submittal

The Escrow Bid Documents shall be submitted by the apparent successful Proposer in a sealed container. The container shall be clearly marked on the outside with the Proposer's name, date of submittal, procurement identification, and the words "Escrow Bid Documents".

The Escrow Bid Documents shall be accompanied with an index to inventory the contents of the submittal, and the Bid Documentation Certification, signed by an individual authorized by the Proposer to execute the price proposal. The Proposer shall use the Bid Document Certification form, Attachment 18.

Prior to award, only representatives of the CDHS will examine the index to the Escrow Bid Documents of the apparent successful bidder. This examination is to ensure that the index is detailed and complete, and conforms to the format and content requirements set forth herein. If all the required documentation has not been indexed in the original submittal, a revised index shall be submitted at the CDHS discretion, prior to award of the Contract.

If the Contract is not awarded to the apparent successful Proposer, the Proposer next to be considered for award shall, upon request of the CDHS, submit Escrow Bid Documents for processing, within three (3) business days of receipt of the amended Notice of Intent to Award, as requested above. Timely submission of complete Escrow Bid Documents is an essential element of the Proposer's responsibility. Failure to provide the necessary Escrow Bid Documents may be sufficient cause for the CDHS to reject the bid.

E. Storage

The Escrow Bid Documents will be placed in escrow, for the life of the Contract, in an institution acceptable to both the CDHS and the Contractor. The cost of the storage will be the responsibility of the Contractor.

F. Examination after Award of the Contract

Both the CDHS and the Contractor shall examine the Escrow Bid Documents, at any time deemed necessary by either the CDHS or the Contractor, to assist in the negotiation for the settlement of claims, in the resolution of disputes, and in Change Order/Amendment pricing. Examination of the Escrow Bid Documents is subject to the following conditions:

- 1) As trade secrets, the Escrow Bid Documents are proprietary and confidential;
- 2) The Contracting Officer and the Contractor shall each designate, in writing to the other party and a minimum of five (5) business days prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents; and
- 3) Access to the Escrow Bid Documents will take place only in the presence of duly designated representatives of both the Contracting Officer and Contractor.

G. Final Disposition

Full control of the Escrow Bid Documents will be returned to the Contractor at such time as the Contract has been completed and final settlement has been achieved.

29. Financial Criteria

To demonstrate and assure the Contractor's or its parent corporation's capacity to fulfill its obligations under this Contract and to serve as security against the risk of loss or insolvency, the Contractor shall meet the following minimum requirements:

- A. The Contractor's average monthly unencumbered consolidated cash balance shall be equal to the largest cost (cost to the CDHS, Contract price whether billed or unbilled) incurred by the Contractor during any consecutive four (4) week period of the Contract and not reimbursed at that time by the CDHS; or

The Contractor's average monthly unencumbered consolidated net working capital shall be equal to two hundred percent (200%) of the largest cost (cost to the CDHS, Contract price whether billed or unbilled) incurred by the Contractor during any four (4) consecutive week period of the Contract and not reimbursed at that time by the CDHS;

- B. The Contractor's consolidated tangible net worth shall be equal to the largest total cost (cost to the CDHS, whether billed or unbilled) incurred by the Contractor for any three (3) month period; and
- C. The Contractor shall maintain a minimum working capital ratio of one-to-one. For purposes of this paragraph, "working capital" means current assets less current liabilities.

The following definitions shall be used for the financial criteria:

- 1) Unencumbered consolidated cash shall be defined as uncommitted cash.

- 2) Unencumbered consolidated net working capital shall be defined as current assets less current liabilities.
- 3) Consolidated tangible net worth (or its equivalent for a non-profit organization shall be defined as book (carrying) value of all assets less the sum of:
 - a. Intangible assets; and
 - b. Liabilities.

30. Financial Reporting Requirements

The Contractor shall provide the Contracting Officer with the information described below throughout the term of the Contract.

A. Quarterly Information

As soon as available, and in any event not later than thirty (50) calendar days, or for such other period as the Contracting Officer may authorize in writing, after the close of each quarter of the Contractor's fiscal year, the Contractor shall submit:

- 1) Financial statements prepared in accordance with generally accepted accounting principles, prepared on a basis consistent with the certified financial reports furnished by the Contractor, (unless the Contractor receives advance written approval from the Contracting Officer to vary from that basis, and such variance is adequately noted in the Contractor's report under this section). Such financial statements shall include:
 - a. A balance sheet for the Contractor as of the closing date of such quarter;
 - b. An income statement or statement of operations for such quarter;
 - c. A statement of changes in financial position for such quarter;
 - d. A calculation of the Contractor's tangible net equity prepared in accordance with the requirements of Exhibit E, Additional Provisions, Section 29, Financial Criteria; and
 - e. Sufficient and appropriate notes to provide adequate disclosure of at least the following:
 - i. The provision for incurred but not reported claims and an explanation of the method of calculating such provision;
 - ii. Accounts and notes receivable from officers, directors, owners, or affiliates, including the name of the debtor, nature of the relationship, and nature of the receivable and its terms; and
 - iii. Forgiven debts or obligations during the period of the financial statement, including the creditor's name and its terms.
- 2) Copies of all financial statements and reports the Contractor generally makes available during the quarter to any of its guarantors, sureties, bonding companies or insurance carriers, or has been required to file with the Securities and Exchange Commission or similar institutions and regulatory agencies of the State and federal governments; and
- 3) A signed statement by the Contractor's Chief Financial Officer certifying that the data provided is current, accurate, and complete; in accordance with generally accepted

accounting principles; and in compliance with the established financial criteria and reporting requirements under the Contract.

B. End of Accounting Year Information

As soon as available, and in any event within ninety (90) calendar days, or for such other period as the Contracting Officer may authorize in writing, after the end of each accounting year, the Contractor shall submit:

- 1) Annual financial statements, prepared in accordance with generally accepted accounting principles on a basis consistent with the prior year or years, including the auditor's letter to management on internal controls, accompanied by the report, certificate, or opinion of an independent certified public accountant;
- 2) Copies of proxy notices, financial statements, and reports the Contractor may make or has made available to any of its security or policyholders or has been required to file with the Securities and Exchange Commission or similar institutions; and
- 3) If the report, certificate, or opinion of the independent certified public accountant is in any way qualified, the CDHS may require the Contractor to take such action as the CDHS deems appropriate to permit an independent certified public accountant to remove such qualification from the report, certificate, or opinion.

C. Other Information

Such other information as the Contracting Officer may request shall be submitted by the Contractor.

D. Required Copies

The Contractor shall provide the CDHS with one (1) copy of each financial report that is required by this section and/or pertains to the HCO Program Operations.

E. Request for Extension

Approval of Contractor requests for extension for submitting required financial reports under the Contract shall be obtained by the Contractor in writing from the Contracting Officer. Oral requests shall not be approved by the CDHS.

F. Centers for Medicare and Medicaid Services Audits

For the fixed-price portions of the Contract, the Contractor shall provide to the CDHS and to Centers for Medicare and Medicaid Services (CMS), for review during a CMS audit, a report that includes an annual breakdown of direct labor expenses by position, summarized by Contractor organization (e.g., customer services) and total. To assist in the audit, the Contractor shall also provide duty statements for those positions requested by the auditor.

G. Fiscal Requirements

- 1) Pursuant to the Contract, whenever a financial statement or other report is required to be certified or be accompanied by the opinion of a Certified Public Accountant (CPA), such accountant shall be independent of the Contractor, determined in accordance with Accounting Series Release Number 126 issued by the Securities and Exchange Commission.

- 2) The term "generally accepted accounting principles," when used in regard to financial statements, assets, liabilities, and other accounting items, means generally accepted accounting principles as used in business enterprises organized for profit. Accordingly, Financial Accounting Standards Board statements, Accounting Principles Board Opinions, accounting research bulletins, and other authoritative pronouncements of the accounting profession shall be applied in determining generally accepted accounting principles unless such statements, opinions, bulletins, and pronouncements are inapplicable. Section 510.05 of the American Institute of Certified Public Accounts (AICPA) Professional standards, in and of itself, shall not be sufficient reason for determining inapplicability of statements, opinions, bulletins, and pronouncements.
- 3) Whenever the financial statements or reports required pursuant to the Contract are to be reported upon or certified by an accountant other than the accountant certifying the Contractor's most recent filing, the Contractor shall furnish the CDHS with a separate letter stating whether in the eighteen (18) months preceding the engagement of the new accountants there was any disagreement with the former accountants on any matter of accounting principles or practices, financial statement disclosure or auditing procedure, which such disagreement if not resolved to the satisfaction of the former accountants would have caused the accountants to make reference to the subject matter of such disagreement in his opinion or report. A principal officer of the Contractor must verify this letter. The Contractor shall also request the former accountants to furnish them with a letter addressed to the CDHS stating whether the accountants agree with the statements contained in the letter of the Contractor and, if not, stating the respects in which they do not agree. The notification by the Contractor along with the former accountant's letter, if necessary, must be furnished to the CDHS within forty-five (45) calendar days of the engagement of the new accountants.
- 4) The CDHS may reject any financial statement, report, certificate, or opinion (other than certified financial reports) submitted to the CDHS under the Contract by notifying the Contractor of its rejection and the cause thereof. Within thirty (30) calendar days after the receipt of such notice or such other period as the Contracting Officer may allow the Contractor shall correct such deficiency and submit an amended report.
- 5) If any report(s) required under the Contract indicate noncompliance with established financial criteria, a written plan to correct such noncompliance shall be submitted by the Contractor with the report. The plan shall be accompanied by a specified time schedule for the corrective activities or actions prepared.

The Contracting Officer shall have the authority to accept the corrective action plan and its time schedule as proposed by the Contractor or to reject either the proposed plan or the time schedule for its implementation and completion as unreasonable or unacceptable. Where the Contracting Officer rejects the corrective action plan and/or the proposed time schedule, the Contracting Officer shall notify the Contractor in writing of the reason(s) for such rejection. The Contractor shall have five (5) business days from receipt of such notice to submit an amended corrective action plan and/or time schedule to the Contracting Officer.

31. General Contractor Responsibilities

A. Cooperation

The Contractor shall cooperate fully with any other contractors that may be engaged by CDHS to work on HCO Program related activities. The Contractor shall cooperate with the CDHS and any law enforcement authorities in the investigation and documentation of possible fraud and

abuse cases or any other possible misconduct related to the Contractor's responsibilities and performance under the Contract.

The Contractor shall cooperate with CDHS, to the extent required by the Contracting Officer, in procuring the HCO Contract during the Contract Turnover and Takeover periods.

B. New Contract Requirements Established by Narrative Proposal

The successful Proposer may offer in its Narrative Proposal to meet requirements which exceed (are more stringent than) RFP requirements. The more stringent requirements contained in the successful Proposer's Narrative Proposal shall supersede the RFP requirements for the purpose of measurement of Contractor performance and for the use of any legal recourse available to the CDHS. Under no circumstances shall requirements, which are less stringent than RFP requirements, be accepted or become a part of the Contract, even if included in the Narrative Proposal.

Only in those instances where the Narrative Proposal has offered to meet more stringent requirements than those required in the RFP and the CDHS has indicated, in writing, its approval of the more stringent requirements, shall the Narrative Proposal prevail.

In the event there are inconsistencies or ambiguities between the Contractor's Narrative Proposal and the RFP, or if the Narrative Proposal does not address RFP requirements, the RFP will govern over the Contractor's Narrative Proposal.

C. Additional Copies of Proposal

Two (2) weeks after CED the Contractor shall provide to the Contracting Officer:

1. An additional five printed copies (one (1) or more volumes) of the updated Narrative and Price Proposals and any clarifications or corrections thereto submitted during the evaluation phase, and
2. Three (3) sets (one (1) or more volumes) of the updated Narrative and Price Proposals, including the evaluation phase version, on CD-ROM.

The printed and electronic copies of the Narrative and Price Proposals submitted to the CDHS shall contain a summary document, which cross-references each Proposal's sections to the Contract sections to which it is a response. Each set of the Proposals shall be submitted as a complete, self-contained unit.

D. Confidential Information

Public access to any confidential, proprietary, or trade secret information (hereinafter "proprietary information"), which is submitted to the CDHS after the award of the Contract, shall be governed by the California Public Records Act (Government Code Section 6250, et seq.).

The CDHS will withhold from public disclosure any bona fide proprietary information pursuant to the provisions of Government Code Section 6255.

The CDHS defines proprietary information for purposes of this RFP as: "Data or materials that the Contractor has identified in a satisfactory manner as being under the Contractor's control and which the Contractor has demonstrated as being of a proprietary nature by reason of copyright, patent, or trade secret under the laws of the State of California that are in effect at the CED".

Proprietary information submitted to the CDHS must be clearly labeled as “confidential” and must be submitted separately. Accompanying the pages designated confidential, the Contractor shall provide full and complete justification indicating the basis on which the claim of confidentiality is based.

The CDHS will notify the Contractor in the event a request is made under the California Public Records Act for the release of proprietary information held by the CDHS. The CDHS will ascertain whether the Contractor's claim that the information is proprietary is bona fide, and may request additional justification from the Contractor. If the CDHS determines that the claims are bona fide, the CDHS will notify the requester that the information will not be released. If the CDHS determines that the claim is not bona fide, the CDHS will give the Contractor ten (10) business days prior written notice of its intent to release the information. The Contractor will be solely responsible for seeking judicial relief to protect such information from disclosure and for defending against any attempt by the requester to compel release of the information in court. The Contractor understands and agrees that the CDHS is not required to take any action in court to protect the information, this being the Contractor's sole responsibility. Further, the Contractor will be solely responsible for any costs or attorney's fees it or the CDHS incurs in connection with litigation related to protection of Contractor's proprietary information. Further, the Contractor will indemnify and hold harmless the CDHS from any claim or expense whatsoever which may occur as a result of the CDHS initially accepting the submitted information as proprietary, or of its handling of such information after a request is made for its disclosure.

E. Priority Hiring Considerations

Contractor agrees that it shall give priority consideration in filling vacancies in positions funded by this agreement to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the W&I Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the W&I Code.

This provision shall not be construed to do any of the following:

- a. Interfere with or create a violation of the terms of valid collective bargaining agreements;
- b. Require the Contractor to hire an unqualified recipient of aid;
- c. Interfere with or create a violation of any federal affirmative action obligation of the Contractor for hiring disabled veterans or veterans of the Vietnam era; and
- d. Interfere with or create a violation of the requirements of Section 12990 of the Government Code, implementing the CDHS of California's nondiscrimination laws.

F. Media Releases

The Contractor shall carry out a detailed and effective review of any information, promotional materials, media release, or advertising proposed to be released by it, or any subcontract, prior to release. The Contractor's review shall ensure at a minimum, the accuracy of terminology, quantitative information, statistical conclusions, and the like. That review shall also ensure that released materials are free from statements that the CDHS would construe as exaggeration, distortion, embellishment, or other unacceptable departure from the purely factual. The Contractor or any subcontractor shall not make any release without the prior written approval of the Contracting Officer. This Provision shall apply to any release which relates to the Contract,

Contractor's performance under the Contract, to any aspect of enrollment/disenrollment services, payment or services by the CDHS, or the Medi-Cal program.

32. Guaranty Provisions

If the Contractor is a subsidiary of a corporation or other legal entity, the full and prompt performance of all covenants, Additional Provisions, and agreements resulting from this Contract for the term of the Contract shall be guaranteed by that entity in the Contractor's chain of ownership, which is publicly traded. This entity shall be known as the Contractor's parent corporation for purposes of the Contract.

The guaranty shall, at a minimum, meet the following requirements. It shall:

- A. Be made to the CDHS;
- B. Be signed by an official authorized to bind the guarantor organization;
- C. Accept unconditional responsibility for all performance and financial requirements and obligations of the Contract including, but not limited to, maintenance of Tangible Net Equity (TNE) and payment of liquidated damages;
- D. Recite that "for good and valuable consideration, receipt of which is hereby acknowledged," the guarantor is making the guaranty;
- E. State that the guarantor stipulates that if the Contract is ultimately awarded to the subsidiary, that the CDHS will so award in reliance upon the guaranty.
- F. State that the undersigned Corporate Officer warrants:
 - 1) That he or she has personally reviewed all pertinent corporate documents, including but not limited to articles of incorporation, bylaws, and agreements between the parent and subsidiary; and
 - 2) That nothing in these documents in any way limits the capacity of the parent to enter into the instant Contract of guaranty.
- G. Include the following provisions:

"The CDHS need not take any action against the Contractor, any other guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against the GUARANTOR.

Further, GUARANTOR hereby waives any and all notices and demands which may be required to be given by any other statute or rule of law and agrees that its liability hereunder shall be in no way affected, diminished, or released by any extension of time, forbearance, or waiver which may be granted to the Contractor, its successor or assignee, and that this Guaranty shall extend to and include all future amendments, modifications, and extensions of the Contract and all future supplemental and other agreements with respect to matters covered by the Contract which the CDHS and Contractor may enter into, with or without notice to or knowledge of GUARANTOR, but GUARANTOR shall have the benefit of any such extension, forbearance, waiver, amendment, modification, or supplemental or other agreement; it being the purpose and intent of the parties hereto that the obligations of GUARANTOR hereunder shall be co-extensive with, but not in the excess of, the obligations of Contractor, its successor or assignee, under the Contract";

H. Be presented in terms, which the CDHS, in its sole discretion, determines shall, as a whole; adequately establish the Contractor's financial responsibility; and

I. Include the following provision:

"GUARANTOR agrees that the guaranty shall continue in full force and effect despite any change in the legal or corporate status of the subsidiary including but not limited to its sale, reorganization, dissolution or bankruptcy".

33. Hours of Operation

The Contractor's hours of HCO Operation shall be as follows:

- A. All HCO Operations shall be available 8:00 AM to 5:00 PM Pacific Time, Monday through Friday, excluding State holidays.
- B. The HPE Process shall be available 7:00 AM to 6:00 PM Pacific Time, Monday through Friday, excluding State holidays.
- C. All Contractor management staff shall be available between the core hours of 8:00 AM to 5:00 PM Pacific Time, Monday through Friday, excluding State holidays.

34. Informal Scope of Work Changes

The Contractor or the CDHS may propose informal changes or revisions to the activities, tasks, deliverables, and/or performance time frames specified in the Scope of Work (SOW), provided such changes do not alter the overall goals and basic purpose of the agreement.

Informal SOW changes may include the substitution of specified activities or tasks, the alternation or substitution of agreement deliverables, and modifications to anticipated completion/target dates.

Informal SOW changes process hereunder, do not require a formal amendment to this agreement, provided the Contractor's annual budget does not increase or decrease as a result of the information SOW change.

Unless otherwise expressly provided in this agreement, all informal SOW changes and revisions are subject to prior written approval by the CDHS.

In implementing this provision, the CDHS may provide a format for the Contractor's use to request informal SOW changes. If no format is provided by the CDHS, the Contractor may use its own format.

35. Insurance

This section sets forth the requirements for insurance and fidelity bonding under the Contract.

As used in this section, a third party carrier means an insurance company and/or bonding company licensed by the CDHS to provide the required lines of coverage and in the amounts required by the Contract.

No policy of insurance or bond provided or maintained under this section shall provide for an exclusion for the acts of officers.

- A. Evidence of the insurance coverage required by paragraph (C) below must be submitted to the Contracting Officer prior to the CED.
- B. If the required insurance is not to be provided by a third party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than standard insurance from a third party carrier must be submitted to the Contracting Officer in writing within ten (10) calendar days after the notice of intent to award the Contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with Contract requirements. If the request is denied by the Contracting Officer, required insurance from a third party carrier must be obtained and evidence of coverage submitted to the CDHS prior to the CED.
- C. The Contractor shall provide and maintain and shall require its subcontractors to provide and maintain the following insurance during the performance of the Contract:
 - 1) Workers' Compensation Insurance in accordance with the statutory requirements of the CDHS where work is performed; and
 - 2) Comprehensive General and Automobile Liability insurance with limits in a minimum amount of five million dollars (\$5,000,000) per occurrence for bodily injury and property damage liability combined. Such coverage must apply to all locations where any work pertaining to the Contract is performed.
- D. The CDHS shall be named as an additional insured on the policy of insurance, with the exception of the Worker's Compensation Insurance, but only insofar as the activities of the Contract are concerned. The CDHS will not be responsible for any premiums or assessments on the policy or policies.
- E. The certificate of insurance must include the following provisions stating that:
 - 1) The insurer will not cancel the insured's coverage without thirty (30) calendar day's prior written notice to the CDHS;
 - 2) The CDHS, its officers, agents, and employees are included as additional insured, but only as concerns operations under this Contract; and
 - 3) The CDHS will be notified of any failure by the Contractor to pay premiums, or any other change in the status or scope of the required coverage.

Contractor agrees that the above insurance shall be in effect at all times during the life of the Contract. In the event said insurance coverage expires at any time or times during the life of the Contract, Contractor agrees to provide, at least thirty (30) calendar days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the CDHS. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the CDHS may, in addition to any other remedies it may have, terminate the Contract.

36. Inventory and Treatment of CDHS Property

In addition to the provisions regarding CDHS property set forth in Exhibit D(F), Special Terms and Conditions, Provision 4, Equipment Ownership/Inventory/Disposition, the Contractor shall ensure:

Title to all property furnished by the CDHS or furnished under the cost reimbursement provisions of the Contract shall remain with the CDHS.

Any property of the CDHS furnished to the Contractor or any subcontractor shall, unless provided herein, or approved in writing by the Contracting Officer, shall be used only for the performance of the Contract.

The Contractor shall maintain an ongoing inventory of all cost-reimbursed CDHS-owned equipment referred to in this section, including property used in Contractor's facilities.

The Contractor shall be responsible for any loss or damage to property of the CDHS, which results from the negligence or willful acts of the Contractor, or any subcontractor, or which results from the failure on the part of the Contractor, or any subcontractor, to maintain and administer that property in accordance with sound management practices. Additionally, the Contractor shall be responsible for any consequential damage to the CDHS stemming from the loss or destruction of CDHS property which is caused, in whole or in part, by the Contractor's (or a subcontractor's) willful act(s) or gross negligence. Further, the Contractor shall provide for alternative services, equipment, and facilities to fully meet its Contractual obligations should CDHS-owned property be lost or destroyed through the actions or inactions of the Contractor or its agents. Provision of the alternative resources of services, equipment, and facilities shall be made by the Contractor with no additional reimbursement or forgiveness from the CDHS in terms of money or time.

The Contractor shall develop and maintain an ongoing inventory of all CDHS-owned equipment, intended for Contractor use, acquired through the Takeover phase of this Contract or purchased through cost reimbursement. Throughout the term of the Contract, the Contractor shall utilize an electronic inventory bar-coding process, which shall identify, log and track all assets by equipment type. The process shall have the capability of tracking transfers of inventory between all office locations involved with the HCO Contract, to include the Contractor's facilities. The process shall also have the capability of developing reports, sorting by type of equipment, location, and date acquired. The system shall have the capability of comparing previous inventory reports with current inventory reports. If discrepancies are determined, the Contractor shall report within five (5) business days to the CDHS the specific reason for the discrepancies.

Upon the Contractor becoming aware, while exercising reasonable diligence, of the happening of loss of, destruction of, or damage to any CDHS property, held or used either by the Contractor or by a subcontractor, the Contractor shall promptly notify the CDHS and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the CDHS all property of the CDHS held either by the Contractor or by a subcontractor prior to settlement, upon completion or termination of the Contract.

The Contractor shall keep all equipment in good condition and repair, and shall not commit any waste thereof or permit anything to be done that may materially impair the value thereof. The Contractor shall use such equipment only in the ordinary course of its performance hereunder and shall not permit such equipment to be used in violation of any applicable law, regulation or policy of insurance. The Contractor shall ensure that all subcontractors also meet these requirements.

37. Liquidated Damages Provisions

A. General

It is agreed by the CDHS and the Contractor that:

- 1) If Contractor does not provide or perform the requirements referred to or listed in this provision, damage to the CDHS will result;
- 2) Proving such damages will be costly, difficult, and time-consuming;
- 3) Contractor will pay the CDHS liquidated damages for not providing or performing the specified requirements;
- 4) Additional damages may occur in specified areas by prolonged periods in which Contractor does not provide or perform requirements;
- 5) The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract;
- 6) The parties recognize that it is the policy of the California Legislature to allow the use of liquidated damages provisions in a State Contract, as shown by Civil Code, Section 1671 (b), Public Contract Code, Section 10226, and 13 California Law Revision Commission Reports 1740 and 1741;
- 7) The CDHS may, at its discretion, offset liquidated damages against payments to the Contractor;
- 8) The maximum amount of liquidated damages payable by the Contractor over any twelve (12) month period is five hundred thousand dollars (\$500,000);
- 9) In the event of cascading Contractor failures resulting from a single failure, subject to liquidated damages; the CDHS will be entitled to assess the highest single liquidated damage penalty only. There will be no concurrent applications of liquidated damages resulting due to cascading failures resulting from a single failure;
- 10) Nothing in this provision shall be construed as relieving the Contractor from performing any other Contract duty not listed herein, nor is the CDHS right to enforce or to seek other remedies for failure to perform any other Contract duty hereby diminished; and

B. Takeover Phase Requirements

Liquidated Damages:

The Contractor shall complete all Takeover preparations as required in Exhibit A, Attachment I, Takeover, including the installation of the HPE Process, the completion of system and subsystem testing, and the successful completion of all CDHS HPE Process acceptance tests. Should the Contractor fail to complete the required installation and testing activities on the primary HPE Process within the time frames specified in Exhibit A, Attachment I, Takeover, the Contracting Officer may, at its sole discretion, notify the Contractor in writing of its intention to assess the Contractor for liquidated damages of up to \$5,000 per business day for each additional business day that the completion of system installation and testing activities is overdue. On the third (3rd) business day following the date on which this notification was delivered to the Contractor, the Contracting Officer may begin levying the liquidated damage assessment specified in its notification to the Contractor.

Liquidated Damages:

Should the Contractor fail to complete required installation and testing activities on one or more HPE subsystems within the time frames specified in Exhibit A, Attachment I, Takeover, the

Contracting Officer may, at its sole discretion, notify the Contractor in writing of its intention to assess the Contractor for liquidated damages of up to \$2,500 per business day for each additional business day that the completion of subsystem installation and testing activities is overdue. On the third (3rd) business day following the date on which this notification was delivered to the Contractor, the Contracting Officer may begin levying the liquidated damage assessment specified in its notification to the Contractor.

Liquidated Damages:

Should the Contractor fail to meet any other Takeover requirement within the time frames specified in Exhibit A, Attachment I, Takeover, the Contracting Officer may, at its sole discretion, notify the Contractor in writing of its intention to assess the Contractor for liquidated damages of up to \$500 per day for each additional business day that the requirement, or requirements, remain unmet. On the third business day following the date on which this notification was delivered to the Contractor, the Contracting Officer may begin levying the liquidated damage assessment specified in its notification to the Contractor.

If the Contracting Officer determines that any failure on the Contractor's part to meet a Takeover requirement by the deadline specified in Exhibit A, Attachment I, Takeover, was caused in whole or in part by the CDHS, the Contracting Officer may reduce or eliminate the corresponding liquidated damages assessments accordingly.

C. HCO Program Operations, Additional Provisions, Change Requirements and Payment Provisions

This Contract obligates and binds the Contractor to carry out the operations and to meet the requirements contained herein for the term of the Contract, unless the Contracting Officer approves the waiver or revision of said obligations and requirements through the issuance of C-Letters, Change Orders, Amendments, or through other contractual mechanisms.

Except as provided in Exhibit E, Additional Provisions, Section 37, Liquidated Damages Provisions, subsections 37.A and 37.B, any failure on the Contractor's part to meet any requirements contained in the Contract Sections governing operations, program change, payment, or additional provisions [citations needed], within the time frames specified in the Sections covering those areas, the Contracting Officer may, at its sole discretion, notify the Contractor in writing of its intention to assess the Contractor for liquidated damages commensurate with the damages incurred by the CDHS. On the fifteenth (15th) business day following the date on which this notification was delivered to the Contractor, the Contracting Officer may begin levying the liquidated damage assessment specified in its notification to the Contractor. At its discretion, the Contracting Officer may assess liquidated damages for each requirement the Contractor has failed to meet.

Liquidated Damages:

If the Contractor does not provide or perform the requirement within fifteen (15) calendar days of the written notice, or longer if allowed by the Contracting Officer, the Contracting Officer may impose liquidated damages on the Contractor of five hundred dollars (\$500) per requirement per calendar day for each day the requirement continues not to be provided or performed. If after fifteen (15) additional calendar days from the date the Contracting Officer imposed liquidated damages, the requirement has still not been provided or performed, the Contracting Officer, after written notice to the Contractor, may increase the liquidated damages to one thousand dollars (\$1,000) per requirement per calendar day for each day the requirement is not provided or performed.

If the Contracting Officer determines that the requirement not being provided or performed was caused in part by the CDHS, the Contracting Officer shall reduce the damages proportionately.

D. Accurate HCO Reporting Requirements

Every report due to the CDHS shall contain sufficient and accurate information to fulfill the CDHS purpose for which the report was generated.

The Contracting Officer shall give the Contractor written notice of a report that is either insufficient or inaccurate and that liquidated damages will be assessed accordingly. After such notice, the Contractor shall have fifteen (15) calendar days, or such longer period as the Contracting Officer may allow, correcting the report.

Liquidated Damages:

If the Contractor fails to correct the report within the fifteen (15) calendar days, or such longer period as the Contracting Officer may allow, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per calendar day per report until the corrected report is delivered. If the report remains uncorrected for more than thirty (30) calendar days from the date liquidated damages are imposed the Contracting Officer, after written notice, may increase the liquidated damages assessment to one thousand dollars (\$1,000) per calendar day per report until the report is corrected.

If the Contracting Officer determines that an insufficient or inaccurate report was caused in part by the CDHS, the Contracting Officer shall reduce the liquidated damages proportionately.

E. Turnover Requirements

Beginning with Turnover, the Contractor shall provide or perform the Turnover requirements of the Contract within Exhibit A, Attachment III, Turnover.

For each and every Contract requirement not provided, or for requirements that are performed inaccurately or not completely, the Contracting Officer shall notify the Contractor in writing that the requirement was not provided or performed as specified and that liquidated damages will be assessed accordingly.

The Contractor shall have one (1) business day from the date of such written notice by the Contracting Officer, or longer if the Contracting Officer allows, to provide or perform the requirement as specified.

Liquidated Damages:

If the Contractor does not provide or perform a requirement within one (1) business day of the written notice, or longer if allowed by the Contracting Officer, the Contracting Officer may impose liquidated damages of five thousand dollars (\$5,000) per business day for each requirement not provided or performed.

If the Contracting Officer determines that the requirement not being provided or performed was caused in part by the CDHS, the Contracting Officer shall reduce the damages proportionately.

F. CDHS Policy Implementation Requirements

The Contractor is responsible for following CDHS directions to implement CDHS policy in a timely manner as prescribed in this Contract. The Contracting Officer will direct the Contractor

in writing to implement various CDHS policies, such as, but not limited to edit, audit, and other system function changes that may not require system enhancements. The Contracting Officer shall give written notice to the Contractor of any failure to comply with any such directions and that liquidated damages will be assessed accordingly. After such notice, the Contractor will have ten (10) calendar days, or such longer period, as the Contracting Officer shall allow, in which to comply.

Liquidated Damages:

After ten (10) calendar days or longer if allowed by the Contracting Officer, if the Contractor does not implement a defined CDHS policy as directed, the Contracting Officer may impose liquidated damages of five hundred dollars (\$500) per calendar day for each day the policy is not implemented from the original date of such non-implementation. If after fifteen (15) additional calendar days from the date the Contracting Officer imposed liquidated damages, the policy is still not implemented, the Contracting Officer, after written notice to the Contractor, may increase the liquidated damages to one thousand dollars (\$1,000) per calendar day for each day the policy is not implemented.

If the Contracting Officer determines that a delay in implementation of a CDHS policy was in part caused by the CDHS, the Contracting Officer shall reduce the damages proportionately.

The Contracting Officer shall not impose damages pursuant to this section if liquidated damages are assessed pursuant to another section for the same conduct.

G. Access

The Contractor shall not deny individuals authorized in the Contract access at any time permissible by the Contract to review ongoing Contractor operations and activities.

Liquidated Damages:

The Contracting Officer will notify the Contractor in writing, of any failure to provide access. If the Contractor fails to provide access, the Contracting Officer may impose liquidated damages in the amount of one thousand dollars (\$1,000) per occurrence per calendar day beginning the day access is denied, until access is provided (there may be more than one (1) occurrence of denial per day). An occurrence is defined as each and every act, which denies an authorized individual access as defined herein.

H. Interest on Pending Liquidated Damages

After the CDHS has determined that liquidated damages are to be assessed, the Contracting Officer shall notify the Contractor in writing of the reason for and amount of the assessment(s). The assessment notice shall be sent to the Contractor by certified mail, return receipt requested, or by any other method which provides evidence of receipt in accordance with Exhibit E, Additional Provisions, Section 17, Contract Communication. At the Contracting Officer's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice.

Any liquidated damages assessment may also be collected, at the Contracting Officer's discretion, by offsetting the funds from payment(s) due the Contractor after the date of assessment.

If it should later be determined in the disputes process that funds collected by the CDHS to pay a liquidated damage assessment should be refunded, the CDHS shall pay interest accruing from the date of offset or collection. The interest rate paid shall be the average rate for investment in the Pooled Money Investment Fund (PMIF) in effect for the month in which the assessment was offset or otherwise collected, in accordance with Government Code section 16480.1. When a liquidated damages assessment is offset or otherwise collected over a period of two (2) or more months, the interest rate paid by the CDHS shall be the average rate for investment in the PMIF in effect for the first (1st) month in which the assessment was offset or otherwise collected, revised quarterly for the period of time the assessment was retained by the CDHS.

The Contractor shall pay interest to the CDHS on all liquidated damages assessments, which are not either paid or offset against payment due the Contractor within thirty (30) calendar days of the date of receipt of the assessment notice. The interest rate paid shall be the average rate for investment in the PMIF in effect for the month of assessment. If the Contractor's continuing liability for one (1) particular liquidated damages assessment extends over a period of two (2) or more months, the interest rate shall be the average for investment in the PMIF for the first month in which liquidated damages were assessed, revised quarterly over the period the assessment remained uncollected.

Interest accrues during all periods of time in which the liquidated damages assessment is unpaid or otherwise uncollected. For instance, interest accrues during periods in which collection of the assessment has been suspended, pending the outcome of the dispute or appeal.

If a reduction in the final amount of liquidated damages is determined, the interest shall be prorated unless impractical to do so.

I. Conditions for Termination of Liquidated Damages

Except as waived by the Contracting Officer, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Contracting Officer certifying the correction of condition(s) for which liquidated damages were imposed and until all Contractor corrections have been subjected to system testing or other verification at the discretion of the Contracting Officer. Liquidated damages will cease on the day of the Contractor's certification only if subsequent testing of the correction establishes that, indeed, the correction has been made in the manner and at the time certified to by the Contractor.

- 1) The Contractor shall provide the necessary time, system or otherwise, to test any correction the Contracting Officer deems necessary;
- 2) The Contracting Officer shall determine whether the necessary level of documentation has been submitted to verify corrections. The Contracting Officer shall be the sole judge of the sufficiency and of the accuracy of any documentation;
- 3) Corrections, systems or otherwise, must be sustained for a reasonable period of at least ninety (90) calendar days from CDHS acceptance, otherwise liquidated damages may be re-imposed without a succeeding grace period within which to correct; and
- 4) Contractor use of resources to correct deficiencies shall not be allowed to cause other problems, systems or otherwise.

J. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.

38. Non-Restrictive Employment Practices

Subject to Exhibit E, Additional Provisions, Section 8, Avoidance of Conflict of Interest, the Contractor shall not prevent any Contractor employee, other than those designated as senior management, from being employed by the CDHS or any successor Contractor. The Contractor shall fully cooperate with the CDHS and the successor contractor in placing employees assigned to the Contract with the successor contractor.

The Contractor shall include the requirements of this subsection in all subcontracts.

39. Notice of Delay

Whenever the Contractor has knowledge that any actual or potential situation (including, although not limited to, labor disputes) is delaying or threatens to delay timely, accurate or required performance of the work under the Contract, the Contractor shall immediately, but not later than one (1) business day after learning of the situation, give written notice and provide all relevant information to the Contracting Officer. The Contractor shall require such notice from all subcontractors and the requirement shall be placed into the language of the subcontract itself.

40. Notification of Claims

The purpose of this provision is to obtain prompt reporting of CDHS conduct, which the Contractor believes will result in, or require, a change to the Contract.

A. Contractor's Notice

Except for Change Orders issued by the Contracting Officer in accordance with Section 14, Change Orders, the Contractor shall promptly notify the Contracting Officer in writing of CDHS conduct (including actions, inactions, and written or oral communications) which it regards as directing or requiring a change to the price or performance schedule elements or the Additional Provisions of this Contract. Notification will be promptly given, but in no event shall notification occur fifteen (15) or more calendar days following the date on which the Contractor first becomes aware of such conduct.

B. Notice Information

The Contractor's notice shall be in a form prescribed by the Contracting Officer and shall state on the basis of the most accurate information then available to the Contractor, the following:

- 1) That it is a claim being filed pursuant to this section (Notification of Claims);
- 2) The date, nature, and circumstances of the conduct regarded as a change;
- 4) The names, function, and activity of each individual, Contractor, subcontractor, CDHS official, or employee involved in or knowledgeable about said conduct;
- 5) The identification of any documents and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;

- 6) The reason why the Contractor believes that the conduct justifies an adjustment to the price or performance schedule elements or the Additional Provisions of the Contract; and
- 7) The particular elements of Contract performance for which the Contractor may seek an equitable adjustment under this clause, including:
 - a. What Contract line item(s) have been or may be affected by the alleged change;
 - b. What labor or materials or both have been or may be added or deleted by the alleged change;
 - c. To the extent practicable, what delay and disruption in the manner and sequence of performance, and effect on continued performance have been or may be caused by the alleged change;
 - d. Estimates of the changes in Contract prices, delivery schedules, and/or other Contract provisions that will, according to the Contractor, generate adequate compensation for the CDHS conduct which gave rise to its Notification of Claim.
 - e. The Contractor's estimate of the date by which the CDHS must respond to the Contractor's notice in order to minimize cost, delay, or disruption of performance.

Following submission of the required notice, the Contractor shall diligently continue performance of the Contract (including matters identified in the notice to the maximum extent possible).

C. Contracting Officer Decision

The Contracting Officer shall respond in writing within thirty (30) calendar days from the date on which he or she received notice from the Contractor, as provided for in this Exhibit (Exhibit E, Additional Provisions, Section 40, Notification of Claims). The Contracting Officer's response shall:

- 1) Indicate whether the conduct about which the Contractor gave notice constitutes a basis for an adjustment to the price or performance schedule of the Contract, and where necessary, provide the Contractor with direction concerning any necessary alterations in its performance under this Contract; or
- 2) Countermand any action or communication earlier given relating to the conduct of which the Contractor gave notice; or
- 3) Deny that the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the Contract, and where necessary provide the Contractor with direction concerning any necessary alterations in its performance under this Contract; or
- 4) If the information in the Contractor's notice is inadequate to permit a decision to be made under Exhibit E, Additional Provisions, Section 40.C, Notification of Claims – Contracting Officer Decision (1, 2, and 3) above, advise the Contractor as to what additional information is required, and establish how that information should be furnished. The Contractor shall have thirty (30) calendar days to respond to the Contracting Officer's request for further information. Upon receipt of this additional information, the Contracting Officer shall have thirty (30) calendar days to respond with a decision.

D. Notice Confirmation

If the Contracting Officer, in his or her sole discretion, confirms that the conduct provides a basis for an adjustment in price or performance schedules, or the Additional Provisions of this Contract, or any combination of these, the Contracting Officer shall issue a written Change Order and the parties shall proceed in accordance with Exhibit E, Additional Provisions, Section 14, Change Orders. Any payment adjustment shall be computed as of the date of the Notification of Claim, or upon the date of delivery of additional information pursuant to Exhibit E, Additional Provisions, Section 40.C, Notification of Claims – Contracting Officer Decision.

If the Contracting Officer, in his or her sole discretion, denies that the conduct identified by the Contractor constitutes a basis for an adjustment in price or performance schedule, or the Additional Provisions, the Contracting Officer shall issue a final decision to this effect and the Contractor may proceed in accordance with Exhibit E, Additional Provisions, Section 27, Dispute and Resolution Process. The final decision thus issued shall remain final and conclusive unless the Contractor files a Notice of Appeal in a timely manner in accordance with Exhibit E, Additional Provisions, Section 27, Dispute and Resolution Process.

E. Contractor Waiver

If the Contractor fails to submit a notice in the manner and within the time specified in this Exhibit E, Additional Provisions, Section 40, Notification of Claims, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature, and the Contractor shall not have any appeal rights, either under this Contract or at law or equity, on such claims.

F. Unsupported Claims

If the Contracting Officer, in his or her sole discretion, determines that the Contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentation of fact or fraud, including failure to provide sufficient information known to the Contractor, the Contractor shall be liable to the CDHS for all costs attributable to reviewing the claim(s).

41. On-Site Monitoring and Audit Staff

The Contractor shall provide through the life of the Contract adequate facilities for CDHS and federal staff at the Contractor's main operating facility no later than one (1) month prior to Assumption of Operations, the following:

- A. Separate space for CDHS monitoring and change management staff not to exceed forty (40) people.
- B. 8,100 square feet to accommodate CDHS staff and necessary equipment. This space shall be in a contiguous location adjacent to the main HCO Program Operations processing area and Contractor's Representative. This shall include five (5) manager offices, two (2) confidential staff offices, three (3) quiet rooms, one (1) conference room, one (1) break room area, a four hundred (400) square foot room for a personal computer and equipment with the proper cooling facilities, and a three hundred (300) square foot room for storage and supplies. Managers' offices, confidential staff offices, server room and supply room shall be equipped with locks, to which only the CDHS managers and CDHS building facilitator shall have keys.
- C. Access to bathroom facilities, which shall include showers and lockers for both men and women.

- D. Space for up to three (3) additional CDHS and/or audit staff on a temporary, as-needed basis, not to exceed seventy (70) business days in a twelve (12) month period. Equipment necessary for these audit activities, such as desks, chairs, telephones, duplicating equipment access, etc., shall be provided as well.
- E. Access to available Contractor parking space to provide free parking space for all CDHS and federal monitoring and auditing staff as well as five (5) designated CDHS visitor spaces. If the Contractor has designated parking for their managers, then designated parking shall be available for each CDHS on-site manager, adjacent to the space provided for comparable Contractor management staff. Reasonable parking accommodations shall be available for disabled staff. CDHS employees shall have the same access to parking facilities as the Contractor employees.
- F. Access to and provision of required support services such as electric outlets, two (2) for each CDHS staff desk location and sufficient others as are required including dedicated lines for CDHS equipment; Cathode-Ray Tube (CRT) cables, both power and communication, one for each CDHS desk location; printer cables; at the CDHS option, direct connect CRTs and printers to the Contractor's computer data center; personal computer connections for each support staff station; access to the main telephone box for the CDHS to install its telephone system; access to Contractor duplication equipment (the use of duplication equipment to be cost reimbursable). Seven (7) Contractor telephones connected into the Contractor's phone network shall also be provided by the Contractor as part of the bid price for the Contract. Five (5) of these phones will be used to facilitate communication between CDHS on-site staff and Contractor staff by providing simplified direct-dialing access between the two groups. The remaining two (2) phones shall be used for monitoring the Telephone Call Center staff telephone activities. The Contractor shall also provide janitorial and maintenance services and restroom and shower availability for on-site CDHS staff.
- G. In addition to the above items which are part of the fixed price, the CDHS may require the Contractor through the cost reimbursement provisions to provide modifications to this facility, such as the addition and/or installation of walls, partitions, modular furniture, any telecommunication links to the CDHS data centers and other equipment, services and monitoring tools for the CDHS to oversee the Contract.
- H. The Contractor shall provide space for an additional ten (10) on-site CDHS staff during the Takeover period of the Contract, commencing two (2) weeks after CED. The Takeover on-site CDHS staff shall be housed immediately adjacent to Contractor staff working on transition activities. These staff shall be provided with desks, chairs, storage cabinets (e.g., book cases); access to duplication equipment and lunch/break/restroom facilities; tables; two (2) locking file cabinets that only CDHS staff shall have keys to; at least one (1) quiet room; one (1) conference room; multiple electrical outlets; telephone hookups to the Contractor's telephone system (at least one (1) for each CDHS staff work station and one (1) for the quiet room); CRT cabling (one (1) for each CDHS staff work station) and four (4) dedicated electrical lines; partitions sufficient to create staff work stations for each two (2) CDHS staff. At least eighty (80) square feet of space shall be allotted for each CDHS staff person. Free parking for all temporary CDHS staff shall also be made available during the entire time of their occupancy, with at least two (2) spaces designated for management. Janitorial and maintenance service shall be provided in the CDHS work area during this time period as well. This temporary space shall remain available for up to fourteen (14) months during Takeover, either in the Contractor's temporary facilities, if and when the Contractor uses a temporary facility, or in the Contractor's permanent main operating facilities. When permanent facilities are available, the Takeover staff may be moved by the Contractor to these facilities. This move will be paid by cost reimbursement.

Further, any long distance telephone calls made by CDHS staff on the Contractor's telephone system shall be cost reimbursed.

42. Prior CDHS Approval Requirements: Communication between Contractor and Beneficiaries, and Contractor and Other Entities

Prior CDHS review and written approval shall be received by the Contractor for all forms, form-letters, and informing materials communication with applicants/beneficiaries, and other entities, and individual correspondence to applicants/beneficiaries and other entities addressing enrollment and/or disenrollment questions, unless the CDHS has approved previous "boilerplate" language. All changes to the above shall also receive prior written CDHS approval. For each and every occurrence where the Contractor fails to meet any of these requirements, the Contracting Officer may notify the Contractor in writing that the requirement was not met. The Contractor shall have five (5) business days to present to the CDHS for review and written approval a written retraction or correction of previously released, unapproved material in publishable form, as well as the exact and itemized costs of developing, printing/imaging or the like, producing, and mailing the unapproved material. With CDHS review and written approval, this retraction or correction shall be printed/imaged or the like, produced and mailed to all applicants/beneficiaries receiving the original document(s) solely at the Contractor's expense within six (6) business days of CDHS review and written approval of the retraction or correction. Further, the costs of developing, printing/imaging or the like, producing, and mailing the original unapproved documents shall be borne solely by the Contractor and shall be deducted from the next payment made to the Contractor by the CDHS.

The Contractor shall not communicate with other entities, including other State entities, unless prior written approval is received from CDHS.

43. Published Telephone List of Key Personnel

The Contractor shall provide the Contracting Officer with a monthly updated list of the direct line phone numbers of senior management and other key personnel. The phone list shall include, but not be limited to, the employees in all functional areas described in Exhibit A, Attachment II, Scope of Work.

44. Severability

Should any provisions of the Contract be declared or found to be illegal, unenforceable, ineffective, or void for any reason, as determined by any federal or State court in final order or judgment which has not been appealed, or in a final determination by an appellate court, then these provisions shall be struck from the Contract and each party shall be relieved of any obligations arising from such provisions. If the remainder of the Contract can feasibly remain in effect in the absence of the invalidated provisions, it shall remain in full force and effect. If operations under the remainder of the Contract are affected by the removal of the invalidated provisions, the Contractor and Contracting Officer shall negotiate a revised scope of work under the remaining valid provisions.

45. Subcontracts -- Relationships between Contractor and Subcontractor, and Cost Reimbursable Purchases

This provision is in addition to Exhibit D (F), Provision 5, Subcontract Requirements. The following list is not all-inclusive. Other aspects of the Contractor-Subcontractor relationship are defined in other sections within Exhibit E, Additional Provisions.

A. Relationships between Contractor and Subcontractor

- 1) As used in the Contract, the term “subcontractor” shall include any individual or entity, whether or not affiliated with the Contractor, which enters into a subcontract with the Contractor, or any other subcontractor.
- 2) A subcontract, as used in this Contract, means any Contract which is a mutually binding legal relationship obligating the seller to furnish the supplies, funds or services (including construction) to the Contractor for use in meeting the requirements of this Contract. It also includes any type of written commitment that is not a part of this Contract, but that can obligate the CDHS to an expenditure of appropriated funds.
- 3) In addition to bilateral instruments, the term “Contract” includes (but is not limited to) job orders; ordering agreements; and orders, such as purchase orders. These forms of a Contract become effective by written acceptance or performance, including changes and/or modifications to purchase orders and bilateral modifications to a Contract, entered into by a subcontract to furnish supplies or services for performance of a prime contract or a subcontract.
- 4) Unless prevented by other provisions of the Contract, the Contractor may enter into subcontract(s) for performance of various portions of its functions under the Contract. All subcontracts pursuant to the Contract shall be in writing.
- 5) The CDHS shall approve subcontracts in advance, unless the need for such approval is specifically waived by the Contracting Officer in advance and in writing. In the event of a waiver, the CDHS shall continue to have access, within two (2) business days of its request, to all related documentation, including the subcontract itself, upon the Contracting Officer's request. Subcontracts in existence prior to the CED, which the Contractor proposes to use for performance of any of its functions under this Contract, shall be subject to the prior approval provisions of this paragraph.
- 6) No subcontract, which the Contractor enters into with respect to performance under this Contract, shall in any way relieve the Contractor of any responsibility for performance of its Contract duties.
- 7) The Contractor shall be held responsible for a subcontractor's actions, or for its failure to take required actions, in regards to fulfilling the requirements of the Contract. Should the CDHS suffer damages due to the actions, or to the inactions, of a subcontractor, the CDHS shall be entitled to seek remedy from the Contractor, either through the liquidated damages provisions of this Contract or through any other mechanism available to it under the Contract; under the law; or in equity. Furthermore, the CDHS may require the Contractor to review selected subcontractors and/or require that the Contractor add additional provisions to a subcontract.
- 8) Any subcontract accepted as a part of the Contractor's Narrative Proposal shall specify that the subcontractor may not terminate or change its relationship to the Contractor without the prior and expressed approval of the Contractor. Such approval by the Contractor shall not be granted unless the Contractor receives prior written approval of the Contracting Officer regarding the termination or change in relationship. The Contractor shall not terminate a subcontract or alter the working relationship between it and a subcontractor accepted as a part of the Contractor's Narrative Proposal without prior written approval of the Contracting Officer.
- 9) The Contractor shall develop and maintain back-up plans, which it shall put into effect at the Contracting Officer's direction in the event of a default on the part of a subcontractor that was accepted as a part of the Contractor's Narrative Proposal. The Contracting Officer may

require that such plans be periodically updated so as to ensure a smooth transition to designated back-up resources with no disruption to contractually required activities.

- 10) The Contractor shall immediately notify the Contracting Officer in writing of any action taken, suit filed, or other claim made against the Contractor by any subcontractor or vendor, which has the potential to result in litigation related in any way to the Contract, and which may entitle a subcontractor or vendor to reimbursement from the CDHS.
- 11) Before the Contracting Officer will consider approving any subcontract for telephone services, the Contractor shall be required to fully inform the Contracting Officer of any products offered by the prospective subcontractor that would levy charges on callers who dial in to hear a recorded message and/or a "live" presentation, and/or to seek assistance.
- 12) Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection or audit.
- 13) CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- 14) The Contractor shall ensure that all subcontracts for service include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- 15) The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

 “(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records.”
- 16) Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

B. Subcontracts and Cost Reimbursable Purchases

In the Contractual relationship between the Contractor and subcontractor, the following requirements shall apply for cost reimbursable purchases:

- 1) The Contractor shall secure at least three (3) written, competitive cost quotations before entering into a subcontract or issuing a purchase order (or equivalent document) resulting in five thousand dollars (\$5,000) or more in charges that are subject to the cost reimbursement and/or Change Order provisions of this Contract. In the case of purchases or subcontracts in excess of one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000), the Contractor may seek Contracting Officer approval to purchase or subcontract without obtaining three (3) competitive cost quotations. The Contractor must obtain the Contracting Officer's approval in writing prior to finalizing a subcontract or a purchase without obtaining three (3) quotations. Lacking this approval, three (3) quotations shall be obtained, as provided above. Purchases or subcontracts for less than five thousand dollars (\$5,000) are exempt from the provisions of this paragraph (B1.). Additionally, the CDHS may, at its sole discretion, process the subcontracts or purchases described in this paragraph through the

CDHS procurement process.

- 2) If competitive quotations are received and the Contractor decides to enter into the subcontract or the purchase with an entity other than the one submitting the lowest cost quotation, the Contractor must obtain the Contracting Officer's written approval before finalizing the subcontract or the purchase.
- 3) In all instances where the Contractor has received written competitive quotations, all quotations received shall be made available to the Contracting Officer upon request. Purchase orders for public utility services and postage at rates established for the general public are not included in this requirement. Subcontracts subject to the cost reimbursement provisions of the Contract shall not provide for payment on cost-plus-a-percentage-of-cost basis. Subcontracts or purchases subject to cost reimbursement by the CDHS shall be payable at reasonable cost. A cost is reasonable if, by its nature and amount, it does not exceed that which would be incurred by a prudent person pursuing similar goods and/or services in a competitive marketplace.
- 4) No changes shall be made to subcontracts wherein services are provided directly or indirectly to the CDHS, without prior approval from the Contracting Officer; and
- 5) The Contractor shall provide to the CDHS, within twenty-four (24) hours of receiving a request from the CDHS, a complete copy of any subcontract, including addenda, amendments, and attachments.

46. Tours

The Contractor shall conduct facility walkthroughs and demonstrations of HCO Operations for prospective bidders throughout the procurement process, or at the direction of the Contracting Officer. These walkthroughs and demonstrations shall include tours of the Contractor's physical plant to demonstrate HCO Operations, and workflows between operational areas. Each walkthrough and demonstration may be attended by up to ten (10) representatives from each prospective bidder, and shall be conducted during the Contractor's operational hours.

47. Training

At the direction of the Contracting Officer, the Contractor shall conduct training sessions for non-Contractor staff. These training session topics shall include, but be limited to, quality management, reports, security and confidentiality, disaster prevention, the HPE Process. The CDHS shall work with the Contractor to schedule, plan, facilitate, and evaluate each training session.

If the Contractor provides training to their staff, the CDHS shall have the option to attend any of the training sessions, with advance notice provided to the Contractor. If the Contractor provides training to their staff, the Contractor shall provide a monthly schedule of such training sessions, along with a syllabus and training materials, if any, to CDHS in advance of each training session.

48. Use of Disabled Veteran Business Enterprises (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and Contracts or subcontracts for property and services for the CDHS be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, Contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.

- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
 - 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall Contract that the substituted subcontractor will perform.

If requested by CDHS, Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of Contract award or in an applicable amendment.

49. Use of Small Business Subcontractors

- A. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this agreement by this reference.
- B. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- C. Requests for substitution must be approved by the funding program and must include, at a minimum:
 - 1) An explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
 - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the Contract will be fulfilled.
 - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall Contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the Contract pursuant to Title 2, California Code of Regulations § 1896.6.

- D. CDHS may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- E. Prior to the approval of the prime Contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime Contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) business days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, CDHS shall give notice in writing of at least five (5) business days to the listed subcontractor of a hearing by CDHS on the prime Contractor's request for substitution.
- F. Failure of the Contractor to subcontract with the small businesses listed in its bid or proposal to CDHS, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanctions are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations § 1896.18 and § 1896.20.
- G. If requested by CDHS, Contractor agrees to provide documentation/verification, in a form agreed to by CDHS, that small business subcontractor usage under this agreement complies with the commitments specified during the Contractor selection process.

50. Waiver of Contract Provisions

No covenant, conditions, duty, obligation, or undertaking contained in or made a part of the Contract shall be waived except by written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations and undertakings, the other party shall have the right to invoke any remedy available under the Contract or under law or equity, notwithstanding any such forbearance or indulgence.

Proposed waivers must be initiated by the Contractor and in a written Contract waiver request signed by the Contractor's Representative. A Contract waiver request shall contain either:

- A. Certified cost and pricing data covering either the costs or cost savings attributable to the requested waiver;
- B. A certified statement that this waiver results in neither an increase in cost nor any cost savings;
or
- C. A certified statement that the costs or cost savings attributable to the change are less than the costs involved in preparing cost and pricing data in response to a Change Order, where the Change Order does not exceed five thousand dollars (\$5,000).

The Contracting Officer's approval of the Contract waiver request shall be in the form of a C-Letter signed by the Contracting Officer and shall define the scope of the waiver. The Contracting Officer may require that the Contractor submit full documentation, including certified cost and pricing data, in support of any waiver authorized pursuant to this section. If there is a cost or cost savings to the CDHS, that cost or cost savings shall be processed in a Change Order or utilized as an offset

pursuant to Section 50, Waiver of Contract Provisions. A waiver shall not exist unless approved by a C-Letter. Exhibit E, Additional Provisions, Sections 13, Cancellation/Termination; 40.E, Contractor Waiver; 27.C, Waiver of Claims; 27.D Contracting Officer's Decision; 45, Subcontracts—Relationships between Contractor and Subcontractor, and Cost Reimbursable Purchases; and 32, Guaranty Provisions contain specific time periods in which to perform. If the Contractor fails to comply with these time period requirements, the Contracting Officer shall impose a waiver of the right to proceed. These specific paragraphs are excluded from the requirements of Section 50, Waiver of Contract Provisions.